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THE UNIVERSITY OF ALBERTA CRIMINAL JUSTICE IN A CANADIAN PROVINCE: A STUDY OF THE SENTENCING PROCESS

by

(C)

John Hagan

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH
IN PARTIAL FULFULMENT OF THE REQUIREMENTS FOR THE DEGREE
OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF SOCIOLOGY

EDMONTON, ALBERTA
SPRING, 1974

CREMINAL INSTITUTE OF BLOEFS PROVINCES A STUDY, OF THE SERVENCING PROCESS

by John Bagan

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THE UNIVERSITY OF ALBERTA FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled Criminal Justice in a Canadian Province: A Study of the Sentencing Process submitted by John Hagan in partial fulfilment of the requirements for the degree of Doctor of Philosophy.

Date. 22. april...

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ABSTRACT

Criminal justice was once assumed; it is now a topic of debate. Concern originates with the social consequences of sentencing: the populations of our prisons. Incarcerated offenders are disproportionately of economically disadvantaged, minority group backgrounds. The following question emerges: "How can we best explain these disproportions?" Answers are provided in several forms.

Data from twenty American studies are reviewed. The analysis indicates that while there may be some evidence of sentencing, knowledge of extra-legal offender differential characteristics contributes relatively little to our ability predict judicial dispositions. Methodological to difficulties of such studies are discussed, techniques of step-wise multiple regresssion and path analysis are proposed as solutions to many of the problems involved.

Attention is next focused on the sentencing of Native Indian and lower socio-economic status offenders in the Province of Alberta, a jurisdiction alleged to be among the most punitive in the Western World. An analysis follows, based on samples gathered at three stages of the sentencing process: (1) 1018 persons charged and handled by the

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Prosecutor's Office in Edmonton; (2) 776 questionaires based on presentence reports prepared in all offices of the Adult Probation Department; and (3) 1000 offenders sentenced and admitted to the five largest prisons in the Province.

The analysis challenges popular conceptions about criminal justice. For example, it is frequently argued that Native and lower socio-economic status defendants receive differential treatment from the courts. However, our analysis reveals that when legal variables are held constant, differences in sentences are minimal. Legal variables—prior convictions and the numbers and types of charges— are found to be salient at all three stages of the sentencing process.

Other variables are also shown to influence sentencing.

At the prosecution stage, presence of defense counsel,
initial plea, and charge alteration are important.

Similarly, at the presentencing stage, the probation
officer's perception of demeanor, assessment of success
prospects, and recommendation for sentence are influential.

However, the extent to which these variables are race or
class-connected is not large.

In the final analysis, the use of fines best explained disproportions in incarceration. Native offenders were

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nearly twice as frequently incarcerated as whites for nonpayment of fines. Almost two thirds of all Native Persons
incarcerated over a two month period forfeited fine
payments. This pattern is linked to problems of alcohol
abuse. Three recommendations are offered: (1) an expansion
of the availability of detoxification centres; (2) an
increased use of Native Court Workers; and (3) the
development of a progressive, income-related fine system.

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ACKNOWLEDGMENTS

Without the support of the Attorney General's Department of the Province of Alberta, this research would not have been possible. This support reflects an important and active concern for the quality of criminal justice in the Province. The assistance is gratefully acknowledged.

Many persons made individual contributions to the research. Professor Gwynn Nettler stimulated the effort and provided the encouragement and direction necessary to its completion. Professors Hackler, Harrell, Kupfer, and Baird contributed important comment and criticism at various stages of the project. Professor Marvin Wolfgang was particularly helpful in clarifying many of the issues involved.

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collection. Mr. D.C. Abbott, Chief Crown Prosecutor of the City of Edmonton, was particularly helpful in accommodating needs of the research.

The assistance of my colleagues, William Avison and Ronald Gillis, is gratefully acknowledged. Dr. Marshall Weber and Drs. Charles and Dorthy Hagan are thanked for their interest and support of my work. My wife, Linda, deserves the ultimate acknowledgment for her unfailing encouragement and deferment of gratification during the period of the study's completion.

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CHAPTER I:

THE PROBLEM: SOCIAL CONSEQUENCES OF CRIME

AND PUNISHMENT

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THE PROBLEM: SOCIAL CONSEQUENCES OF CRIME AND PUNISHMENT

The law, observed George Herbert Mead (1928), is a twosided sword. Acting as a deterrent to some, it may increase likelihood of recidivism among others; satisfying the victim's desire for retribution, it may increase a sense injustice among those who are punished; protecting the safety of society, it must restrict the freedom of those who pose a threat; and, finally, attempting to rehabilitate offend, its therapies will often be imposed on a clientele hostile to receiving them. Given this set of conflicts, it is not difficult to understand why the job of effecting "justice" is problematic, and the provided in legislation directed toward the achievement of this task, so flexible. It is within this context, however, that systems of criminal justice must operate. Justice is to find its direction in the wise exercise of discretion by its appointed agents. The result is a concern for the use of this discretion and the disparities that may follow from it.

JUDICIAL DISCRETION IN CANADA1

Perhaps the most familiar example of the role of discretion in the process of criminal justice involves the sentencing responsibilities of the judiciary. Anglo-American systems of criminal justice depend generously on the careful

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JUDICIAL DISCRETTON

exercise of discretion by the judiciary, and this is particularly the case in Canada. Legislation outlining the sentencing responsibilities of the criminal courts in Canada entrusts to presiding judges nearly complete freedom in the determination of minimum sentences. Similarly, a wide range of discretion is allowed in the establishment of maximum penalties. Thus Hogarth appropriately notes that "The formal law as expressed in the Criminal Code and related statutes gives enormous discretionary power to the courts without guidance as to how that power is to be exercised" (1971:4).

The nature of the problem, however, extends beyond the absence of statuatory guides to minimum and maximum sentences. Also involved is confusion regarding a basic set of principles to be used in the determination of sentences. Thus Decore (1964) notes that even the utilization of precedents in sentencing is a matter of contradiction and doubt. A consequence is a heavy burden on the sentencing judge, with the implication that variation and disparity will follow.

A striking indication that Canadian sentencing patterns may be distinctive is found in the research of Cousineau and Veevers (1972). This study compares the use of imprisonment in Canada with that in other western countries. Findings reported by Cousineau and Veevers indicate that Canada ranks

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highest among western nations in its rate of incarceration.

Several studies hae attempted to chart the effects of the use of judicial discretion within Canada. The first of these studies, by Jaffary (1963), examined differences in sentencing patterns between provinces. Finding that the differences were substantial, Jaffary concluded that important discrepancies exist in the severity of the treatment of offenders in Canada.

Using a similar mode of analysis, Matthews (1972) compared sentencing norms in the Province of Alberta those of other provinces in Canada. Data reported in this study suggest that Alberta has the highest "incarceration to conviction ratio" of any province in the nation. Extrapolating from the findings of Cousineau and Veevers, Matthews concludes that "... Alberta's use of incarceration minor offenses is greater than any other country in the Western World" (1972:63). More recently, however, Swanton has demonstrated that although Alberta remains high relative to other provinces in its rate of incarceration, differences between provinces are smaller the originally indicated.

A final study of sentencing, by John Hogarth (1971), has shifted concern from differences between provinces, to variation between judges. The goal of this research is to

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explain variation in sentencing through attention to judicial (1) attitudes and beliefs, (2) perceptions of social and legal constraints, (3) cognitive styles, and (4) perceptions of relevant case facts. The result of Hogarth's analysis is a powerful model for the prediction of variation in sentencing.

Several comments may help to place the studies we have reviewed in proper context. First, the studies discussed deal primarily with aggregated units of analysis: their major concerns are with variation in sentencing between nations, provinces, and judges. Taken at their own levels of analysis, the resultant findings are both valid important. However, when the level of analysis is explicitly clear in the interpretation of such data, problems of inference can emerge (Robinson, 1950; Blalock, Hannan, 1972). What is required is information regarding variation within these larger categories, focusing on the individual offender as the unit of analysis. example, in the current study, we will be concerned with variation in the sentences received by Native and socio-economic status offenders. 3 As this type of research is combined with that carried out at higher levels of analysis, we will eventually be able to determine the relative contribution of variables operative between and within the different levels, to the explanation of the total

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variation in sentencing.

Second, each of the studies we have reviewed focuses on only one stage in the sentencing process. It is important to note that sentencing is a process, and that therefore we must consider the various stages involved. For example, the prosecutor can play an important role in determining the charges that will receive sentence. The probation officer may be influential in providing a recommendation for sentence in the presentence report. Offenders themselves often play a crucial role in their willingness or ability to take advantage of fine options. Finally, correctional authorities make important decisions after sentencing in determining the type of institutional treatment that the incarcerated offender will receive. Previous research has often neglected these antecedents and consequences of the actual imposition of sentence. The current study examines sentencing as a sequential process, with attention given to several of the stages involved4.

A third observation involves the inferences that can be drawn from the findings reported in the studies previously discussed. It needs to be emphasized that complete uniformity in sentencing is not the goal of modern systems of criminal justice. Realization of such a goal would necessitate reintroduction of a set of penal statutes

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inflexible to the particular circumstances of those appearing before the courts (Hogarth, 1971:7). What is desired is something much more difficult to achieve: what Hood (1962) has referred to as "equality of consideration." It is to the prospects for equal consideration, in the context of wide-ranging powers of judicial discretion, that our attention now turns.

DISCRETION, DISPARITY, AND DIFFERENTIAL SENTENCING

A recently popular point of view in the field of criminology has argued that the use of discretion in sentencing is a matter of bureaucratic convenience, with disadvantaged minority groups suffering the unfortunate consequences. Thus it is frequently assumed, without adequate test, that discontinuities resulting from the exercise of judicial discretion will find expression in differential sentencing practices.

To date, this viewpoint has probably found its strongest advocates in the United States. For example, Quinney proposes that,

Obviously judicial decisions are not made uniformly. Decisions are made according to a host of extra-legal factors, including the age of the offender, his race, and social class.

Perhaps the most obvious example of judicial discretion occurs in the handling of cases of persons from minority groups. Negroes, in

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comparison to whites, are convicted with lesser evidence and sentenced to more severe punishments (1970:142).

A more detailed version of this argument is presented in the work of Chambliss and Seidman (1971). An attempt is made here to develop a propositional theory of the legal process applicable in complex societies like Canada and the United States. The theory views systems of criminal iustice as bureaucracies whose use of discretion is problematic. The key postulate in the system of propositions assumes that legal decision-making will be motivated by the desire to maximize institutional benefits, while minimizing addition, it is assumed that organizational strains. In political power, in its close association with social status, is the basic determinant of organizational rewards and constraints. Two testable deductions follow:

- (1) Where laws are so stated that people of all classes are equally likely to violate them, the lower the social position of the offender, the greater is the likelihood that sanctions will be imposed on him.
- (2) When sanctions are imposed, the most severe sanctions will be imposed on persons in the lowest social class (1971:475).

Leaving no doubt about the meaning of these propositions for the actions of the judiciary, Chambliss and Seidman observe that, "The judge's role in Anglo-American law in sentencing allows for at least as great discretion as



do the roles of the prosecutor and the police... The demands for efficient and orderly performance of the court take priority and create a propensity on the part of the courts to dispose of cases in ways that ensure the continued smooth functioning of the system. The consequence of such a policy is to systematically select certain categories of offenders (specifically the poor and the black) for the most severe treatment" (1971:468). Similar concerns seem imminent in Canada.

CRIME AND PUNISHMENT IN A CANADIAN PROVINCE

While questions of criminal justice have not received the attention in Canada that they have in the United States, signs of an emerging concern are apparent. Recent reports by the Canadian Corrections Association (1967) and the Canadian Civil Liberties Educational Trust (1971) have indicated a growing concern for the possibilities of injustice in the operations of our legal system. From the academic quarter, a similar concern is expressed in Turrittin's response to John Hogarth's landmark research effort: "By providing the 'inside story' on sentencing, the... appetite is whetted for similarly exhaustive research regarding other aspects of Canada's criminal justice system, such as the social consequences of sentencing..." (1972:192).

The awakening of interest in criminal justice in Canada

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has seemed to have as one of its origins a growing awareness of perhaps the most disturbing result of the operations of our legal system: the populations of our prisons. Although precise figures have seldom been available, Canadians have increasingly become aware that our prisons contain a disproportionate segment of offenders with disadvantaged, minority group backgrounds. The concern, of course, is with the factors that send these particular offenders to the prison setting.

To answer such questions about crime and its punishment in Canada, it is necessary to approach the problem level of analysis that allows attention to a relatively detailed set of data. Thus, in the current study, the sentencing process is investigated in a restricted setting: the Province of Alberta. Attention to the problem within this setting allows us to focus on a series of important steps in the sentencing process. Thus, our analysis will include attention to (1) the activities involved in criminal the role of the probation officer in the (2) prosecution, (3) the consequences presentencing process, and of sentencing in terms of incarceration and treatment.

The choice of Alberta as the setting for the study is appropriate in that the Province contains a relatively large Indian and Metis population, a minority whose fate in the

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hands of the law has become a topic of renewed concern in recent years (Stewart, 1964; Westermeyer, 1973; Reasons, 1972; Bienvenue and Latif, 1973). Adding to the interest of a study in this setting, is the controversy surrounding Matthews' (1972) charge that the dispensation of prison sentences in Alberta is proportionally greater than in any other part of the Western World.

Three samples form the basis of our investigation:

- (1) A sample of 1,000 offenders sentenced and admitted to the five largest prisons in the Province over a two month period, from February 15 to April 15, 1973.
- (2) A sample of 776 questionaires, based on the information contained in presentence reports, completed by probation officers in all offices of the Adult Probation Department in the Province, during a four month period from February 1 to June 1, 1973.
- (3) A sample of 1,018 persons charged and handled by the Prosecutor's Office in Edmonton during a six month period, from October 1, 1972 to April 1, 1973.

Each of these samples will be discussed in more detail as the data concerned are analyzed in the chapters that follow. For the moment, however, our attention will be confined to the use of the first sample, in census-like fashion, to indicate the social consequences of incarceration in Alberta.

Turning our attention to Table I, we can see the racials consequences of incarceration in the five largest

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TABLE I:

PROPORTION NATIVE AND WHITE OFFENDERS INCARCERATED

IN ALBERTA CORRECTIONAL INSTITUTIONS

Prison

Race	Fort Saskatchewan	Calgary	Calgary Lethbridge	Peace	Belmont Total	Total
Indian & Metis	38.9%	25.9% (83)	76.9%	54.5%	26.7% (20)	39.5%
White	61.1% (229)	74.1% (238)	32.1% (54)	45.5%	73.3%	60.5%
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penal institutions operated by the Province. This Table indicates that the Native population of the institutions ranges from a high 67.9 per cent at Lethbridge to a low of 25.9 per cent in Calgary. Overall, Table I indicates that 39.5 per cent of those offenders imprisoned in Alberta are of Native origin. In contrast, data from the 1971 census of Canada indicates that the Native Indian population of Alberta is only 2.7 per cent. It is possible that these figures are not strictly comparable, is the sense some of the Metis population in the Province may have designated in the "Other" "Unknown" OI census categories. However, when the Native Indian, Other, and Unknown categories are combined, the total is still only 9.3 per cent. This figure indicates that offenders with backgrounds are represented at least four time as often in the Provincial prison population as in the population.

Table II summarizes the distribution of incarerated offenders by sex. All female offenders are incarcerated in one institution in the Province, and reference to specific prisons is therefore absent from this Table. Table II reveals the most salient characteristic of the prison population of the Province: 94.7 per cent of the offenders incarcerated are men. At the same time, 1971 Canadian census data indicates that in the Province of Alberta the sex ratio

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TABLE II:

PRCFORTION MALE AND FEMALE OFFENDERS INCARCERATED IN ALBERTA CORRECTIONAL INSTITUTIONS

Total	100%	(966)
Female	5.3%	(53)
Male	% C • 76	(643)

TABLE III:

PROFORTION NATIVE AND WHITE, MALE AND FEMALE OFFENDERS INCARCERATED IN ALBERTA CORRECTIONAL INSTITUTIONS

39.4% (392)	(409)	966
49.1% (26)	50.9% (27)	53
38.8%	61.2% (577)	643
Indian & Metis	White	
	ndian 38.8% 49.1% 39.4 Metis (366) (26) (392	ndian 38.8% 49.1% 39.4 Metis (366) (26) (392 hite 61.2% 50.9% 60.6 (577) (27) (604

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has equalized, with 100 males for every 100 females. Thus, in Alberta, as in most Westen Nations, women are relatively infrequently sent to prison. Table III, however, takes this finding one step further by demonstrating the relationship between race and sex among incarcerated offenders. This Table indicates that nearly 50 per cent of the females incarcerated in the Province are of Indian or Metis background. Thus, while the incarceration rate for females is generally quite low, among those women who are sentenced to prison, the representation of Native Persons is further increased over that noted in Table I.

Tables IV and V again suggest over-representation of certain types of offenders in Alberta prisons. In Table IV, providing information on the age of incarcerated offenders, 54.7 per cent of the offenders are in the youngest age group, from 16 to 25 years of age. Canadian census data from 1971 indicate that this age group contains approximately 17 per cent of the general population. Similarly, Table V reveals that 41.3 per cent of the prison sample has had educational experience beyond grade eight, while census data indicates that 67.4 per cent of the general population has completed grade nine or above.

In summation, it appears that the prison population of Alberta is disproportionately Indian, Metis and male, while

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TABLE IV.

FROPORTION PERSONS 16-25, 26-70 INCARCERATED IN ALBERTA

CORRECTIONAL INSTITUTIONS

Prison

Age	Fort Saskatchewan	Calgary	Lethbridge	Peace	Belmont	Total
ر م	(202)	(182)	(70)	70.9%	(38)	54.7% (531)
7 -	43.4%	43.3%	56.5%	29.1%	50.6%	45.3%
	357	321	161	ស	77	971

TABLE V:

PROPORTION OF OFFENDERS INCARCERATED IN ALBERTA CORRECTIONAL INSTITUTIONS WITH BELCW AND ABOVE GRADE NINE EDUCATION

Prison

	Total	58.7% (575)	41.3%	978
Belmont		53.5%	6° ~	71
River				
Peace		78.2%	21.8%	55
Lethbridge		70.7% (116)	29.3%	164
Calgary		50.0%	50.0%	310
Fort	Saskatchewan	59.1% (223)	40.9%	378
Education	(Grade)	8-0	9 and above	

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also young and limited in educational background. The question that emerges is, "How can we best explain these disproportions?"

Answers to this question will range from the charges heard earlier, that the judicial system handles cases in a differential manner, to the defense that these segments of the population contain the most frequent and serious offenders. Our investigation will test these and related hypotheses.

POOTNOTES

*Several factors tht distinguish Canadian and American criminal law are discussed in Appendix IV.

**Hogarth's (1971) research utilizes both the offender and the judge as the unit of analysis. However, the dominant theoretical focus of the study is on variation that occurs between judges in sentencing.

3 American research focusing on individual offender attributes is reviewed in Chapter Two.

*This dissertation is, of course, a beginning rather that a completion of the task. Attention is given in this analysis to prosecution, sentencing, incarceration, and treatment. Yet to be considered are information on the use of pre-trial detention (see Friedland, 1965) and the role of the victim (see the discussion of inter- and intra- racial offenses in Chapter Two). Data relating to these issues will be analyzed in future reports.

**SRecognizing that the term "race" is used with a variety of meanings, it is important that we clarify the usage adopted in this thesis. We will restrict our usage to the referents indicated in the first definition of the Oxford Dictionary: "Group of persons... connected by common descent,...; distinct ethnical stock...."

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CHAPTER II:

THE LITERATURE: EXTRA-LEGAL ATTRIBUTES AND

CRIMINAL SENTENCING

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THE LITERATURE: EXTRA-LEGAL ATTRIBUTES AND CRIMINAL SENTENCING

Nearly half a century since Thorsten Sellin (1928) first introduced the topic for research, the issue of differential sentencing is still very much with us. The result is a large body of American research that deserves our careful consideration. The discussion that follows is a review of this research, with specific attention to the following questions:

- (i) <u>Are</u> extra-legal attributes a basis of differential sentencing?
- (ii) If so, how much differential sentencing occurs?
- (iii) In what particular <u>contexts</u>, if any, does the differential sentencing occur?

STUDIES OF JUDICIAL SENTENCING

Studies of judicial sentencing have tended to adopt a "sociological viewpoint", emphasizing the role of "extralegal attributes" of the offender in the determination of judical dispositions. 1 The independent variables given prominence by this approach include the race, sex, age, and socio-economic status of the defendant. Although such variables presumably legally irrelevant to the are imposition of sentence, sociologically-oriented studies have attempted to detect the possibility of their extra-legal r - FERNEARET :

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An alternative view of judicial sentencing, which attends to factors emphasized in official-normative descriptions of the criminal justice system, may be referred to as the legalistic approach. The variables of interest here include the defendant's prior conviction record, and the content of the charges currently placed against him.

Table VI provides an overview of the manner in which the two viewpoints have been incorporated in twenty studies of judicial sentencing patterns.2 All twenty of the studies treat on e or more of the extra-legal offender characteristics the independent variable(s), while as sixteen of the studies also hold constant at least one legal aspect of the defendant and his offense. There is, then, in most of these studies, an acknowledgement of legal factors when testing sociological hypotheses. However, the degree to such studies incorporate controls for considerations is an important source of variation. The nature of this variation, and its apparent consequences, will be a source of continuing concern in the remaining portions of this Chapter.

To understand the patterns of analysis commonly found in studies of judicial sentencing, it will be helpful to consider briefly the statistical techniques frequently used



TABLE VI

STUDIES RELATING EXTRA-LEGAL OFFENDER

CHARACTERISTICS AND JUDICIAL DECISION-MAKING

STIDY	PRIMARY SAMPLE	SALIENT INDEPENDENT VARIABLES	SALIENT DEPENDENT VARIABLES	LEGAL VARIABLES CONTROLLED	TEST OF SIGNIFI- CANCE	MEASURE OF ASSOCIATION
SELLIN (1928)	18239 cases in Detroit	race	sertence, conviction	offense	ou	0 0
MARTIN (1934)	927 cases, Texas, 1930	race, occu- pation, sex, age	sentence	none	og	Ou
JOHNSCN (1941)	122 death sentences, N. Carolina, 1933-39	race of of- fender &	appellate review	murder cases only	. c	0 0
LEMERT ET.AL. (1948)	914 cases, Los Angeles, 1930	race	sentence	offense, prior record	Yes	ou
GARFINKEL (1949)	821 offenders, homicide, N. Carolina	race of of fender & victim	sentence, charge re-	type of murder	og	o u
JOHNSCN (1957)	660 admissions, death row, N. Carolina:1930-40	race, educa- tion, occupa- tion	execution	offense	Yes	O E
GREEN (1961)	1437 cases, Philadelphia	sex, age, ethnicity	sentence	offense, prior re- cord, number of charges	Yes	y e
BULLOCK (1961)	3644 Texas pri- sion inmates	race	sentence	offense type	Yes	Yes
JACOB (1962)	1864 court cases, New Orleans	race	sentence	offense type	Yes	по
BEDAU (1964)	235 capital cases, New Jer-sey, 1907-60	race, age sex, SES	execution	none	X es	o u

TABLE VI, CONTINUED

STUDY	PRIMARY SAMPLE	SALIENT INDEPENDENT VARIABLES	SALIENT DEPENDENT VARIABLES	LEGAL VARIABLES S CONTROLLED C	TEST OF SIGNIFI- CANCE	MEASURE OF ASSOCIATION
(1964)	118 robbery cases, 291 burglary cases, Philadelphia	race of of- fender & victim	sentence	type of offense, number of charges, prior record	o u	оп
PARTINGTON (1965)	2796 rape cases, Virginia	race	sentence & appellate review	type of rape	0 g	ou
WOLFGANG ET. AL. (1962)	439 death sen- tences, murder, Fennsylvania	age, race, occupation	appellate review	offense type	Yes.	ou
WOLF (1965)	159 capital cases, New Jersey:1937-61	age, race	sentence	offense	¥ e.s	ou
BEDAU (1965)	92 capital cases, Oregon, 1903-64	race, age, SES	execution	none	0	ou
FORSLUND (1969)	3882 arrests, Samford, Conn.	race, occu- pation, age	conviction, dismissal	none	Yes	no
SOUTHERN REGIONAL COUNCIL (1969)	1207 cases, 7 southern states	race of of- fender & victim	sentence	offense, prior re- cord	0 9	ou
NAGEL (1969)	2936 larceny 8 assault cases	income, sex, race, age	sentence & conviction	offense, number of charges, prior record	0	S e &
JULSON ET. AI. (1969)	238 First Degree Murder cases, sen- tenced by Jury	Race, Age, Sex, SES	execution	prior re- cord, character- istics of the offense	y es	yes
WOLFGANG ET. AI. (1973)	3,000 rape cases, from 11 southern states 1945-65	race of offender 8	execution	prior record, contemporaneous offense, and others	s e s	ou

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in this type of research. Of the twenty studies cited in Table VI, eleven incorporated tests of significance, four computed summary measures of association, and eight used neither form of analysis. The frequent reliance on tests of significance in these studies is problematic, particularly given the extensive debate regarding the merits of such tests (see Selvin, 1957; Selvin and Stuart, 1966; Kish, 1959; Camilleri, 1962; and Labovitz, 1969). In the context of the current discussion, several difficulties associated with the use of significance tests need to be examined.

A basic problem in the use of significance tests the frequency with which their results misinterpreted. One source of this problem is the tendency to confuse the meanings of substantive and statistical . significance. A relationship is considered statistically significant when we have established, subject to an accepted risk of error, that there is a relationship between two variables. Separate from the issue of whether a relationship exists is the question of how strong the relationship is. The strength of a relationship is indicated by a measure of association. Tests of significance are inappropriate for this purpose because they are markedly influenced by the size of the sample involved. For example, when the sample size is large, as is usually the case in studies of sentencing3, it is generally guite easy to establish

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statistical significance for even a very small relationship. Within the context of large samples, then, we are saying very little by indicating that we have established a statistically significant relationship (Blalock, 1960:225).

A second problem in the use of tests of significance involves a confusion of the meanings of causal statistical significance. This confusion of meanings is particularly dangerous in the type of nonexperimental research here considered. The error consists of a failure to acknowledge that a statistically significant relationship between an independent and dependent variable may often be alternatively explained (i.e., shown to be spurious) controlling for antecedent variables associated with the independent and dependent variables. The tendency to mix the meanings of causal and statistical significance may thus misguidedly encourage a premature end to the process of data analysis resulting in the assignment of false importance to spurious findings. 5 This frequent failure to consider alternative explanatory hypotheses is recognized, in the current review, in the inconsistent manner in which sociologically oriented studies of judicial sentencing have held constant the influence of legally relevant variables.

One final point should be made regarding the samples

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utilized in studies cited in Table VI. Ten of these studies (Johnson, 1941; Garfinkel, 1949; Johnson, 1957; Bedau, 1964; Partington, 1965; Wolfgang et al., 1962; Wolf, 1965; Bedau, 1965; Judson et al., 1969; and Wolfgang and Riedel, 1973) deal primarily with capital cases, while the remaining ten investigations (Sellin, 1928; Martin, 1934; Lemert and Rosberg, 1948; Green, 1961; Bullock, 1961; Jacob, 1962; Green, 1964; Forslund, 1969; Southern Regional Council, 1969; Nagel, 1969) focus largely on non-capital offenses. Because capital crimes directly involve important social mores, because they are more often tried before juries, and because sentencing decisions in these cases usually follow protracted litigation, it may be reasonable to expect different patterns of dispositions in samples made up of such cases. Consideration of these factors may be important in drawing inferences from the studies involved.

Succeeding sections of this Chapter will examine the twenty American studies in terms of the points emphasized above. Thus, we will in turn investigate the relationship between race, socio-economic status, age, and sex of the offender, and the nature of judicial dispositions. In each study, we will consider not only the statistical significance of the relationship, but also the strength and form of the association, the extent to which controls are introduced for the influence of legally relevant factors,

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and the type of sample forming the context of the investigation.

RACE AS THE INDEPENDENT VARIABLE

The most frequently considered offender characteristic in studies of judicial sentencing is race. Sociologicallyoriented studies have been concerned that the judicial process may be either excessively harsh, or, alternatively, unduly lenient, in the handling of minority group defendants. The assumption has been that relationships observed in either direction would reflect negatively on notions of equality before the law.

To evaluate the hypothesis that "race makes a difference," we have reanalyzed relevant data from seventeen studies (see Tables VII,VIII,IX, and X).6 Because most of the studies did not compute a measure of association, and because some of them also did not include a test of significance, it was necessary to perform additional computations on the data provided in the original tables. Where additional computations have been performed, the results are presented in brackets. In addition, there were instances where tables useful for comparative purposes were not included in the final presentation of a study's findings. It was often possible, however, to reconstruct many of these tables from the text.7 Again, summary

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statistics derived from these reconstructed tables are shown in brackets. Finally, the test of significance used is chisquare (x²), and the measure of association presented is Goodman and Kruskal's tau-b.8 An advantage of the latter measure is its interpretation in terms of the increase in accuracy, beyond that available by chance, that knowledge of an independent variable makes possible in the prediction of a dependent variable. In this discussion, we will be concerned with the extent to which knowledge of the extralegal attributes of the defendants improves our accuracy in predicting judicial dispositions.

An examination of Table VII, containing focusing on non-capital cases, reveals a number interesting findings. Perhaps the most striking aspect of the table the small magnitude of many of the is relationships observed. Thus, the largest tau-b indicated in the first column of the Table is .025 (Southern Regional Council, 1969), with the majority of the studies revealing relationships much lower in strength. It is particularly notable that this is often the case regardless of the statistical significance of the findings. Thus there are several statistically significant relationships noted in the table where tau-b is smaller than .01, indicating that knowledge of race increases the accuracy of the prediction of sentencing outcome by less than one per cent.

TABLE VII

RACE AS AN INDEPENDENT VARIABLE (NON-CAPITAL CASES)

καl	tau-b	((-016)	(080)							(:003)	(.015)		(.024)	(.622)
VARIABLES	. × ×				3.21	15.98							1.00	4.90 P>.10		(10.14)	(13.74) (P<.01)
SIGLNIFICANT	PRIOR				none	SOBe							none	00 80 90 90		none	SOBB
	tau-b	(980.)	(.010)		(.021)	(.014)	(-047)	(.035)	(.017)	(+00+)	(.005)	(010)	1900				
FOR LEGALLY	× 2	(119.6)	(266.4) (P<.01)		19.16 P<.01	15,16	7,85	10.00	3.C6 P>.10	8.10	1.92	14.45 P<.01	1 70	P - 19			
CONTROLS	OFFENSE	felonies	misdemenor		burglary	2nd degree	narcotics	assault	rape	murder	rape	burglary	burglare	7 4 5 4 7 8 8			
	tau-b	(*008)		(.007)	(*008)					(.002)			(*005)		(.011)	(-025)	
	X 2	(392.4)		(31.97) (P=.01)	(20.41)					(8.37)			20.5		(43.33) (P<.01)	(25.66) (P<.01)	
	CEPENDENT VARIABLE	sentence		sentence	sentence					sentence			sentence		conviction	sentence	
	STUDY	SELLIN (1928)		MARTIN (1934)	LEMERI ET AL.	(1948)				BULLOCK (1961)			GREEN (1961)		FORSLUND (1969)	SOUTHERN	COUNCIL (1969)

	tau-b		(*003)	(•025)
	×		(.52)	(P=.47) (7.51) (P<.01)
	PRIOR .		none	SOBe
	tau-b		(.003)	
CNUED	x 2	(P=.30) (26.48) (P<.01)	(P .59) (8.20)	(P<.01)
TABLE VII, CONTINUED	OFFENSE	state assault state larceny	assault federal	larceny
TAB	tau-b	(.004)		
	× ×	(3.53) (P>.01) (7.73)		
	DEPENDENT	state cases federal	(larceny &assault	cases)
	STUDY	(1969)		

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Attention is next given to the effect of controlling for the type of offense charged. Although there is Table VII of a strenghening of relationships evidence in when offense is held constant, the more notable result is an indication once more of the relatively small relationships involved in many of these studies. Thus, while many of the findings reported in Table VII statistically are significant, the median value of tau-b reported in the offense column of this table is .014. In different terms, when the type of offense is controlled, the median increase in the accuracy of prediction of judicial disposition from knowledge of the defendant's race, is 1.4 per cent.

A useful illustration of the uninformative aspects of significance tests is available in Bullock's (1969) data. Bullock presents several tables showing relationships between race and sentencing that are statistically significant at the .01 level. Unfortunately, these tables were percentaged within categories of the <u>dependent</u> variable. Although handling the data in this manner has no effect on calculations of statistical significance, presentation in this form makes interpretation of the results difficult (Zeisel, 1957; Hirschi and Selvin, 1967). In Table VIII, we have repercentaged the original data within categories of the <u>independent</u> variable. The results are informative.

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first section of Table VIII contains all the cases in Bullock's original sample, with the dependent variable dischotomized into "short" and "long" sentences. percentage difference between blacks and whites receiving short and long sentences is only four per cent, yet this finding is statistically significant at the .01 level. When the type of offense is controlled in the remaining sections of Table VIII, the percentage differences increase somewhat, but fluctuate in direction. Thus, eight per cent of the blacks receive longer sentences for burglary, while seven per cent receive shorter sentences for rape and this size in the direction Fluctuations of of relationship could easily result from a distortion introduced in the original research when the continuous dependent variable, length of sentence, was dichotomized the categories "short" and "long." In addition, the differences could result from the failure to hold constant offenders prior records. Notwithstanding these the possibilities, three of the four relationships illustrated in Table VIII are statistically significant.

Returning our attention to Table VII, we consider next the effects of controlling both for the type of offense charged and the previous record of the offender. Three

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TABLE VIII

RACE AND SENTENCING (BULLOCK, 1961)

Race	Tot	Total Cases		Burgla	Burglary Cases		Rap	Rape Cases	•	Murd	Murder Cases	
	Per Cent Short Sentences	Per Cent Per Cent Short Long Sentences Sentences	×	Per Cent Per Cen Short Long Sentences Sentence	Per Cent Per Cent Short Long Sentences Sentences	Z.	Per Cent Short Sentences	Per Cent Per Cent Short Long Sentences Sentences	z	Per Cent Per Cent Short Long Sentences Sentences	Per Cent Per Cent Short Long Sentences Sentences	z
Black	52 52 84	× 83	1727	72%	28%	572	4	59%	119	4 2 %	58%	1037
White	29.00	K 55	1917	8008	20%	910	% ## E	% 99	255	84 10 10 10 10 10 10 10 10 10 10 10 10 10	65%	751
X2	8.37			5 th ° th .			1.92			8.10		
C4	<.01			<.01			<.25			<.01		
tau-b	.002			.010			000			000		



studies (Lemert and Rosberg, 1948; Green, 1961; and Nagel, 1969) have utilized this type of simultaneous control. 9 Each of the three studies dichotomizes the previous record of the offenders in terms of either no previous convictions one or more previous convictions. When both of these controls are introduced, the results of the studies are strikingly consistent. In all three studies, when only those cases of offenders with no previous convictions are considered, the relationships between race and sentencing become statistically insignificant (at the .05 level), with the median tau-b equal to .003. Thus, in this instance, the increase in the accuracy of predicting judicial outcome from knowledge of race is less than one per cent. Alternatively, when those cases involving offenders with "some" convictions are considered, the relationships between race and sentencing in two of the three studies statistical significance. In these latter instances, tau-b reaches a high value in Lemert and Rosberg's study of .08, and a low value in Green's research of .015. The median tauthis case, is .025, representing a 2.5 percent increase in the accuracy of predicting judicial outcome the basis of knowledge of race.

An example of the interaction effect just described, undiscussed in the original study, can be illustrated by reconstructing several tables from Nagel's (1969) research.

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The reconstructed data is presented in Table IX. The first section of this Table indicates a 14 per cent difference in the rate of imprisonment of black and white offenders. However, when the presence or absence of prior convictions is controlled, the outcome changes. Thus, among offenders with no prior convictions, the difference in the rate of imprisonment for blacks and whites shrinks to six per cent and becomes statistically non-significant at conventional levels. In contrast, among offenders with "some" prior convictions, the racial difference in the rate of incarceration increases to 16 per cent and retains statistical significance.

It is interesting to note two of the interpretations given to the type of findings just reported. Lemert and Rosberg conclude that the statistically significant relationship between race and sentencing for offenders with "some" previous convictions indicates that, "...race prejudice is a more significantly operating variable when groups concerned are definitely stereotyped as criminal" (1948:18). In contrast, Green suggests that the control implied in "one or more" previous convictions, "...is insensitive to possible differences between whites and racial minorities in the number of prior felony convictions, a factor which is very likely to influence the judge's determination of the sentence" (1961:11, emphasis in the

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TABLE IX

THE EFFECTS OF CONTROLLING FOR PRIOR CONVICTIONS (NAGEL, 1969)

Race		Black	White	X 2	Q.	4000
Total Feder	Per Cent Suspended Sentence or Probation	% 97	* 09	8.20	<.01	.017
Total Federal Larceny Cases	Per Cent Imprisoned	54%	# O #			
a ses	Z	152	330			
Federal No Pric	Per Cent Suspended Sentence or Probation	80%	86%	.52	74.	600
Federal Larceny Cases, No Prior Convictions	Per Cent Imprisoned	20%	14%			
ses, ons	×	37	114			
Federal Some Pr	Per Cent Suspended Sentence or Probation	34%	SO \$	7.51	<.01	300
Federal Larceny Cases, Some Prior Convictions	Per Cent Imprisoned	899	50%			
es,	z	110	186			

TABLE X

RACE AS THE INDEPENDENT VARIABLE (CAPITAL CASES)

				CONTROLS	FOR LEGAL	LEGALLY SIGNIFICANT		VARIABLES	SI EI II
STUDY	DEPENDENT VARIABLE	Χs	tau-b	OFFENSE	X 2	tau-b	PRIOP	X 2	tau-b
JOHNSCN (1941)	appellate review	(P=.76)	(.001)	sample contains capital cases only	ins				
GARFINKEL (1949)	sentence (murder cases only)	(7.57) (P=.02)	(*008)	1st degree murder 2nd degree murder & manslaughter	(P<.01) (P<.01) (P=.96)	(.001)			
JOHNSCN (1957)	appellate review (capital cases only)	(11.33) (P<.01)	(.617)	murder rape burglary	(14.19) (P<.01) (P<.30) (P<.30) (P>.30)	(.029)			
BEDAU (1964)	execution	(8.20) (P=.C2)	(.012)	sample contains capital cases only	s s				
PARTINGTON (1965)	sentence (rape cases only)	(46.06) (P<.01)	(.001)	Att'd rape Att'd stat. rape Stat. rape Rape	(30.26) (P<.01) (2.18) (P=.14) (F=.02) (P=.02) (R<.01)	(.021) (.128) (.013) (.006)			
WOLFGANG (1968)	appellate review (capital cases only	4.33 P<.05 Ly	(.012)	felony murder non-felony murder	4.27 P=.04 P=.35	(.003)			
WOLF (1965)	sentence (capital cases only	4.157 P=.65 Ly	(.031)	felony murder non-felony murder	P : 23	(*004)			

TABLE X, CONTINUED

	tau-b		
	X 2		.001
	PRIOP RECORD X2 tau-b		interval (P<.05) .001
	tau-b		** 54
	OFFENSE X2	sample contains capital cases only	execution (10.34) (.043) sample contains (P=.02) capital cases only
	tau-b	(.001)	(*043)
	VARIABLE X2	execution (.06) (.001) sample contains (P=.97) capital cases only	execution (10.34) (P=.02)
6	Idote	BEDAU (1965)	JUDSON ET AL. (1969)

at

*the value reported in this column is r², a measure analogous in interpretation to tau-b, an interval level of measurement (See Costner, 1965).

original). Clearly, additional data providing a more systematic control for the <u>number</u> of prior convictions will be necessary before any definitive conclusions can be reached. For the moment, we can only conclude that this version of the "racial hypothesis" remains open to some doubt.

Our attention is directed next to Table X, containing studies concerned primarily with sentencing in capital cases. Findings reported in this table parallel those noted Table VII. Again the relationships observed are not in large. Thus, the median value of tau-b, before controlling for offense, is .012, and .015 after holding offense constant. Knowing the race of the offender in capital cases, then, increases the accuracy of predicting judicial disposition by 1.5 per cent. The causal importance of this relationship, however, is called into doubt by the single study controlling simultaneously for charge and related "third" variables. Thus Judson et al. (1969) report a partial r² in this context of .001.10 This relationship is not statistically significant at the .05 level.

INTER-RACIAL OFFENSES

Finding reviewed to this point suggest some reason to doubt the charge of racial discrimination in sentencing. One plausible path of analysis, however, remains to be examined.

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TABLE XI

INTER-RACIAL ROBBERY AND BURGLARY*

Total 21.5 (118) 21.5	Total 16.3 (295)	
N-N 14.3 (45)	N-N 6.96 (66) 8.30	()
W-W 22.4 (22) 21.9	W-W 12.28 (80) 11.88	
N-W 27.5 (51) 27.1	N-W 10.62 (149) 10.44	
Robbery Cases: Observed Means Exfected Means	Burglary Cases: Observed Means Expected Means	

N-W=Negro victim; N-Green (1964). defendant-white *This table is adapted from defendant-white victim; W-W=white N=Negro defendant-Negro victim.

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The hypothesis offered for consideration here suggests that it is in the context of inter-racial offenses, particularly those involving blacks victimizing whites, that discrimination is most likely to occur. This proposition has been tested in samples of both capital and non-capital offenses.

Table XI contains the single study (Green, 1964) offering a test of the inter-racial hypothesis in a sample of non-capital cases. Using a mode of analysis somewhat different from that of other studies considered in this review, Green first established the mean sentence received for robbery and burglary offenses in each of three offender-victim groupings. Next, "expected" means were calculated for each of the groupings on the basis of the specific offense, number of bills of indictment, and prior convictions characterizing the cases in each grouping. Comparisons of the observed and expected means, presented in Table XI, reveal that the discrepancies are small, and in no consistent direction. The inter-racial hypothesis thus receives little support from this set of findings.

Turning our attention to Table XII, containing samples of capital cases, we encounter more disturbing findings. In this table, three of the five studies report findings statistically significant at the .05 level, with a median

TABLE XII

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INTER-RACIAL CAPITAL CRIMES

		CONTROLS	CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES	LY SIGNI	FICANT VA	RIABLES	
STUDY	DEPENDENT	OFFENSE	X S	tau-b	PRIOR	X 2	tau-p
JOHNSCN (1941)	Appellate Keview	Capital cases	(2.37) (P=.12)	(*019)			
GARFINKEL (1949)	Sentence	1st Degree Murder 2nd Degree Murder & Manslaughter	(8.38) (P<.01) (167) (P=.68)	(.002)			
PARTINGTON (1965)	Sentence	Rape Cases Only	(5.68) (.063) (P=.02)	(•063)			
HOLFGANG ET AL-		Sentence Rape Cases Only	275.71 P<.05	(.226)			
JUDSON ET AL. (1969)	Sentence	Capital Cases	(.008) (P=.93)	(.001)			

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tau-b of .021. The finding causing the most concern, however, is the relationship between race and sentence reported by Wolfgang and Riedel (1973). In this study of inter- and intra-racial rape in eleven southern states, the tau-b relationship between race and sentence is .226. In other words, knowing the inter- and/or intra-racial make-up of rape cases, allows a 22.6 per cent increase in the accuracy of predicting a life or death outcome for the defendants.

Unfortunately, Wolfgang and Riedel have not yet published data relating to a further control for the prior records of the offenders. Instead, they have simply indicated that such a control does not eliminate the statistical significance of the original relationship. Given our earlier discussion of the influence of sample size on the results of significance tests, we clearly cannot base any final conclusions on this information alone. Nevertheless, given the strength of the original relationship, it is safe to conclude that this study raises the suspicion of discrimination, even if it does not definitively establish its existence.

Finally, it should be noted that four of the five studies reported in Table XII were carried out in the southern United States. The single study of sentencing in

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relationship between race and sentence in the uncertaint state of predicting the inter- and/or intra-rackal maxe-up.

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inter-racial capital cases conducted outside of the south (Judson et al., 1969), does not report statistically significant differences in the use of the death penalty by the race of offender and victim. The authors note in the text that this relationship remains non-significant in the presence of a control for prior record and several other possible suppressor variables.

SOCIO-ECONOMIC STATUS AS THE INDEPENDENT VARIABLE

Following race, socio-economic status of the defendant is probably the most common suspect variable in studies of judicial sentencing. Six of the studies examined in this review have focused on the socio- economic status of the offender as an independent variable. These studies are summarized in Tables XIII and XIV. 11

Looking at Table XIII, containing samples primarily of non-capital cases, we find statistically significant findings both before and after controls for the type of offense. The median tau-b before controlling for type of offense is .020, and .024 after the introduction of this control. Holding offense constant, then, the median increase in the accuracy of predicting disposition, knowing socioeconomic status, is 2.4 per cent.

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TABLE XIII

SOCIO-ECONOMIC STATUS AS AN INDEPENDENT VARIABLE (NON-CAPITAL CASES)

	tau-b									(.008)	•	(0000)	
CCNTROLS FOR LEGALLY SIGNIFICANT VARIABLES	× ×									(1.24)	(P=.26)	(2.76)	(P=.10)
METCANT	PRIOR									none		Some	
ALLY SIGN	tau-b			(.024)		(000)		(.017)			(.024)		
FOR LEGI	χs			(8.84)	(P<.01)	(23.75)	(P<.C1)	(2.09)	(P=-14)	(12.70)	(P<.01)		
CCNTROIS	OFFENSE			state	assault	state	larceny	federal	assault	federal	larceny		
	tau-b	(*00*)	(*016)		(080)		(.023)						
	Χs	(180.63) (.004) (P<.01)	(58.41) (.016) (P<.01)		(30.88)	(P<.01)	(15.10)	(P<.01)					
	DEPENDENT VARIABLE	sentence	conviction	sentence	state	cases	federal	cases	(larceny &	assault	cases)		
	STUDY	MARTIN (1934)	FORSLUND (1969)	NAGEL	(1963)								

The most important findings in Table XIII, however, are found in Nagel's analysis of larceny cases appearing in the federal courts. It was in the instance of federal larceny cases only that Nagel was able to control for both offense type and prior record of the offender. Controlling only for offense, Nagel's data indicate a statistically significant (p<.01) relationship between socio-economic status and sentencing (tau-b=.024). However, when the control for previous record is introduced, the relationship becomes statistically insignificant (at the .05 level) diminished in strength (tau-b=.008 and .009). When legal factors are held constant, then, knowledge of social class increases accuracy in predicting judicial outcome by less than one per cent.

Somewhat different findings emerge from Table XIV, containing studies whose samples consist mainly of capital cases. While the first two studies in this table (Bedau, 1964; Bedau, 1965) report findings that are statistically non-significant at the .05 level, and weak in strength (tau-b=.002 and .022), the final study, by Judson et al. (1969), reports a relationship between socio-economic status and disposition that is statistically significant at the .001 level, and somewhat stronger in strength (tau-b=.048). This relationship remains substantially unchanged (tau-b=.032), and statistically significant (p<.01), following the

TABLE XIV

SOCIO-ECONOMIC STATUS AS THE INDEPENDENT VARIABLE (CAPITAL CASES)

	tau-b			(.032)
RIABLES	≈ .			interval measure (P<.01)
ICANT VA	RECORD X2			interva
SIGNIE	tau-b	(.002)	(.022)	*(800)
CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES OFFENSE	X 2	(P=.69) (.002)	(3.23) (.022) (P=.20)	(17.77) (.048)* interval (P=.001) measure
ROLS FO	,		_	
		capita	capita.	first degree murder
DEPENDENT	VARIABLE	execution capital cases	execution capital cases	execution
Yunts		BEDAU (1964)	BEDAU (1965)	Judson ET AL. (1969)

*the value reported in this column is r^2 , a measure analogous in interpretation to tau-b, at an interval level of measurement (See Costner, 1965).

introduction of controls for prior record and a series of other potentially contaminating variables. There is, then, some evidence of discrimination by social class in the disposition of capital cases in this study of jury sentencing in a non-southern state.

AGE AND SEX AS THE INDEPENDENT VARIABLES

A final set of tables considers the role of age and sex independent variables in the process judicial of sentencing. Looking first at Tables XV and XVI, we find a number of studies reporting data on the role Although three of the four studies in Table XV initially report statistically significant relationships between age and disposition, these relationships are consistently small. median value of tau-b, before controlling for offense type and prior record, is .006. Following the introduction of these controls, Green reports that the relationship loses statistical significance (at the .05 level), and attains a value of tau-b equal to .011. Similarly small relationships are the norm in Table XVI, where studies involving capital cases are summarized.

Tables XVII and XVIII contain data from three studies that have considered the role of sex as an independent variable in the formation of judicial dispositions. The pattern of findings recorded in these tables is consistent

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TABLE XV

AGE AS AN INDEPENDENT VARIABLE (NON-CAPITAL CASES)

				CONTROLS	CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES	SIGNIFI	CANT VAR	IABLES	
STUDY	DEPENDENT	× ×	tau-b	OFFENSE	X &	tau-b	PRIOR	×	tau-b
MARTIN (1934)	sentence	(14.01) (P<.01)	(-015)						
GREEN (1961)	sentence	60.30 P<.01	(-007)	(.007) burglary			none	4.0 P>.20	(-011)
FORSLUND (1969)	conviction	(22.49) (P<.01)	(9000)						
NAGEL (1969)	sentence	(1, 92)	(2002)	state	(1.33)	(+00+)			
	CASES	(P=-17)	(2001)	state	(4.61)	(.011)			
	rederal	(P=.24)	(100.)	federal	(F=.03)	(.001)			
	(larceny 6			assault	(P=.79)				
	assault cases)	(ses)		federal	(1.82)	(:003)			
				larceny	(P=, 18)				

TABLE XVI

AGE AS THE INDEPENDENT VARIABLE (CAPITAL CASES)

		CONTROLS FOR	LEGALLY	LEGALLY SIGNIFICANT	IT VARIABLES	NE SE	
STUDY	DEPENDENT VARIABLE	OFFENSE	X2	tau-b	PRIOR	× ×	tau-k
BEDAU (1964)	execution	capital cases	(3.84) (P=.15)	(*008)			
WOLFGANG ET AL. (1962)	appellate review	capital cases	(27.44) (P<.01)	(27.44) (.067) (P<.01)			
WOIF (1965)	sentence	capital cases	.43 P=.51	(*008)			
BEDAU (1965)	execution	capital cases	(1.24) (P=.54)	(-005)			
JUDSON ET AL. (1969)	execution	first degree murder	(P=.56)	(.001)			

with that contained in the findings derived from Green's research (1961). Green's data indicate that when sex of the offender and final sentencing decision are related, without controlling for additional legal variables, the result is a tau-b of .005, a finding significant at the .02 level. However, when offense type is held constant, and when only those cases of offenders with no previous convictions are considered, the resulting relationships are reduced below statistical significance, and the values attained by tau-b are .001 and .004. This pattern is repeated in a study of capital cases by Judson et al. (1969). Thus it can be tentatively concluded that the sex of the defendant plays a negligible role in the formation of judicial dispositions.

DISCUSSION

The central finding of this review has been that of a generally small relationship between extra-legal attributes of the offender and judicial disposition in studies of criminal sentencing. In more specific terms, the findings of the review can be summarized with reference to each of the four attributes considered:

(a) Race: Some evidence of discrimination was found in the sentencing of inter-racial capital cases in the southern United States. In samples of non-capital cases, however, when offense type was held constant among offenders with no prior record, the relationship between race and disposition was diminished below statistical significance. Again holding

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The central fielding or the demanding been of the offender and judicis dispension the crisical sentences, in cota ip cuffe was the review out be exampliced with deference four attributes considered:

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TABLE XVII

SEX AS AN INDEPENDENT VARIABLE (NON-CAPITAL CASES)

				CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES	TEGALLY	SIGNIFI	CANT VAR	LABLES	
STUDY	DEPENDENT VARIABLE	××	tau-b	OFFENSE	X 2	tau-b	PRIOR RECORD	X2	tau-b
MARTIN (1934)	sentence	(3.29) (P=.99)	(.001)						
GREEN	sentence	9.1 P<.02	(5002)	felony			none	. 02	(.001)
				misdemeanor	•		none	1.45 P>.30	(*000*)
NAGEL (1969)	sentence state	(7.77)	(9000)	state	(99.)	(-602)			
	cases federal	(P=.10) (.37)	(100.)	assault state	(P=.42) (6.46)	(.011)			
	(larceny &	(50.04)		federal	(60.08)	(.001)			
	cases)			federal	(F=.70) (1.54) (P=.21)	(-003)			

TABLE XVIII

SEX AS THE INDEPENDENT VARIABLE (CAPITAL CASES)

CONTROLS FOR LEGALLY SIGNIFICANT VARIABLES

			+	3 3 3	210011	4	7. 77.
EEDAU (1964)	execution	capital cases	7.52 P<.01	(•033)			
JUDSON EI AL· (1969)	execution	first degree murder	(16.49) (.041) (P=.001)	(.041)	interval measure P>.05	1 P>.05	*(900•)
*the value	*the value reported in this column is r2, a measure analogous	s column is r	2 a measu:	re analo		to tau-b, at an	at ar

interval level of measurement (See Costner, 1965)

offense type constant, this time among offenders with "some" previous convictions, a modest, statistically significant relationship between race and disposition was sustained in two of three studies. The need for a more definitive control over the <u>number</u> of previous convictions was indicated.

- (b) Socio-Economic Status: With social class as the variable of concern, some evidence of discrimination was again found in sentencing in capital cases, this time in a non-southern state. This finding withstood controls for legally significant factors. In a sample of non-capital cases, however, the relationship between class and disposition was diminished in strength, and reduced below statistical significance, by holding constant the effects of offense type and prior record.
- (c) Age and Sex: In capital and non-capital cases alike, initial relationships between both age and sex, and judicial disposition, were reduced below statistical significance by the introduction of controls for legally relevant factors.

Several comments regarding the above findings may be helpful in placing them in proper context. First, it should be noted that capital cases constitute a relatively small proportion of those cases heard in the criminal courts. Second, samples of capital cases used in the studies we have considered often have included sentencing decisions made as far back as the turn of the century. Third, capital cases are frequently tried before juries, rather than judges. Thus, several of the studies of sentencing in capital cases deal with jury dispositions only (Wolf, 1965; Judson et al., 1969), while others concerned with inter-racial offenses

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are, in effect, focusing <u>primarily</u> on jury decisions (see Garfinkel, 1949:403). Such studies may, then, say more about the inadequacies of our jury system, <u>particularly as it has been involved in the invocation of the death penalty</u>, then about the larger operations of our judicial system taken in a contemporary context.

In commenting on the findings recorded in this review, is also important to note that the authors of the original articles often suggested the occurrence of differences in sentencing, where our analysis has frequently indicated the weakness of the evidence "supporting" such inferences. One plausible explanation of this discrepancy returns us to a concern, voiced at the outset of this paper, regarding the uncritical use of tests of significance. In these initial remarks, it was noted that a liability of conclusions formed on the basis of significance tests alone is the tendency to confuse substantive and causal significance with statistical significance, thus circuiting the search for alternative explanations relationships. In the studies reviewed, analysis frequently stopped short of the consideration of important variables, while at the same time overlooking the size of the relationships reported.

Finally, the central finding of our discussion needs to

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be reemphasized. Our review of the data from twenty American studies of judicial sentencing indicates that, while there may be some evidence of differential sentencing, knowledge of extra-legal offender characteristics contributes relatively little to our ability to predict judicial dispositions. The instances in which knowledge of extra-legal attributes of the offender increased our accuracy in predicting judicial disposition by more than five per cent were a rarity.

CONCLUSION

in this Chapter are generally not presented supportive of the strong statements frequently made role of extra-legal attributes in criminal sentencing. the One response to the findings will be the suggestion that the data considered do not adequately address all of the issues particular, it may be argued that criminal involved. In be studied as a process sentencing must that often disadvantages minority group defendants at stages preceding sentencing. The current study includes a partial test of this viewpoint by focusing on three stages in the sentencing activities involved in criminal (1) the prosecution; (2) the probation officer's involvement in presentencing process; and (3) incarceration and treatment. In order to maximize the use of our resources, we

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(f) (S) <u>social</u> confine our attention to the two extra-legal attributes given prominence by our review of the literature: race and socio-economic status. Finally, the present study is distinguished from previous research by its attention to a minority group infrequently considered. Native Persons- in a setting previously unexamined- the Province of Alberta.



FOOTNOTES

The term "extra-legal attributes" is used in this discussion to refer to perceived characteristics of the offender that are formally extraneous, by law, to the imposition of sentence.

The term "sociological viewpoint" is used in a restrictive sense to refer to a popular emphasis on extralegal attributes in studies of sentencing. There are, of course, other sociological views on sentencing, and some of these are considered in the conclusion to this chapter.

2Studies were originally located by consulting previous discussions of the sentencing literature (Overby, 1971; Green, 1971; Mannheim, 1968), a bibliography on sentencing research (Tompkins, 1971), Abstracts on Criminology and Penology, and Sociological Abstracts. A purposive sample of twenty studies, and tables therein, was then selected on the basis of three criteria: (1) public availability, (2) attention to variables of concern, and (3) frequency of citation in the literature.

30ne misguided reason for the use of large samples in sentencing studies is the problematic assumption that such a procedure will randomize the effects of extraneous variables. This assumption is, of course, fallacious.

*Labovitz makes a similar point in the following manner:

It may be argued that significance tests at best provide the absolute minimum of knowledge, e.g., whether or not 'r' is significantly different from zero...But a zero relation... is useless to refute. Most things (and perhaps all things) are statistically related, if only to a very small degree. The surprising case is the zero relation, which is more likely in small samples than in large (1969:143).

**For an excellent discussion of the techniques of causal analysis, and the use of statistical controls for the test of alternative explanatory hypotheses, see Hirschi and Selvin (1967:35-174). This discussion will also be useful in distinguishing the different techniques used in introducing statistical controls in tabular, as contrasted with multivariate, analysis.

*One of the studies (Jacob, 1962) did not present data

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in a manner suited to inclusion in this table; two other studies (Green, 1964; Wolfgang and Riedel, 1973) are reserved for consideration in Tables IIIA and IIIB.

7A copy of the tables used in this review is available, on request, from the author. For a discussion of the methods of secondary analysis used in this review, see Hirschi and Selvin (1967: Chap. 3).

Chi square was chosen as the test of significance in this review because of its frequent use in the original studies. For a discussion of the chi square test of significance, see Blalock (1960:212-221). Goodman and Kruskal's tau-b was selected as the measure of association on the basis of its proportional-reduction-in-error (PRE) interpretation (see Costner, 1965), and further on the basis of the measure's performance in a recent "test of validity" by Hunter (1973). For a discussion of tau-b, see Blalock (1960:232-234).

*It should be noted that Lemert and Rosberg's study additionally involves a control for occupational status. A fourth study, by the Southern Regional Council (1969), did not control for previous record simultaneously with offense, and therefore is not included in this discussion.

correlation, see Blalock (1960: Chap. 19). For a discussion of the particular partial correlation procedures used in this instance, see Judson et al. (1969).

11In five of these studies (Martin, 1934; Forslund, 1969; Bedau, 1965; and Judson et al., 1969), the indicator of socio-economic status is occupation; in the sixth study (Nagel, 1969), the indicator is "indigent" or "nonindigent" financial status.

CHAPTER III:

THE METHODOLOGY: TABULAR AND MULTIVARIATE TECHNIQUES

IN THE STUDY OF SENTENCING

II

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THE METHODOLOGY: TABULAR AND MULTIVARIATE TECHNIQUES IN THE STUDY OF SENTENCING

Our review of American research on extra-legal attributes and criminal sentencing revealed two basic problems: (1) the need to control systematically in such studies for legal and extra-legal variables involved in sentencing, and (2) the importance of determining the degree to which legal and extra-legal characteristics are predictive of variation in sentencing. Both of these factors weigh heavily in the choice of a method of analysis for the current study.

More than a decade ago, Wolfgang et al. (1962) suggested the need for caution in interpreting the results of research on discrimination in sentencing: "Because there are always many difficulties encountered when seeking to hold constant a variety of factors in the personal and social background of offenders who appear before the courts, carefully controlled research in this area of differential judicial treatment is still in its nascency" (302). An indication of the extent of the problem is provided more recently by Wolfgang and Riedel (1973:127-128) in a list of the variables considered relevant in a study of the imposition of the death penalty for rape:

Offender characteristics
 a. age

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- b. marital status
- c. prior criminal record
- d. previous imprisonment
- e. employment status
- 2. Victim characteristics
 - a. age
 - b. marital status
 - c. dependent children
 - d. prior criminal record
 - e. reputation for chastity
- 3. Nature of relations between victim and offender
 - a. offender known to victim
 - b. prior sexual relations
- 4. Circumstances of offense
 - a. contemporaneous offense
 - b. type of entry-- authorized or unauthorized
 - c. location of offense-- indoor or outdoor
 - d. display of weapon
 - e. carrying of weapon
 - f. amount of injury to victim
 - g. threatened victim
 - h. degree of force employed
 - i. victim made pregnant by offense
 - j. one or more multiple offenders
 - k. date of offense
- 5. Circumstances of the trial
 - a. plea
 - b. defense of insanity
 - c. appointed or retained counsel
 - d. length of time of trial
 - e. defense of consent
 - f. whether defendant testified

The difficulty involved in considering this many independent variables is, of course, that in tabular analysis the number of cases available for manipulation will seldom be sufficient for the task. Hirschi and Selvin make this point graphically in a comparison of the efficiency of

regression and tabular techniques: "A sample of two hundred cases is large enough to compute a regression equation of fifty variables, but a sample of two thousand cases may not be large enough to examine the joint effects of five variables in a percentaged table" (1967:167). In short, whenever the tabular analyst needs to examine the simultaneous effects of more than two or three independent variables, he is likely to run out of cases.

The inefficiency of tabular analysis frequently leads to serious problems of inference. For example, because of his inability to consider all of the independent variables simultaneously, the tabular analyst never knows how much of the variation in the dependent variable he has explained, or, even more importantly, whether his overlapping sets of independent variables may have explained the same variation more than once. Approached from a different angle, this problem produces difficulties in causal inference. A hypothetical example, abstracted from the sentencing literature, will help to clarify the problem of causal inference in tabular analysis.

It is very common to find four intercorrelated independent variables associated with final disposition in studies of sentencing. These variables are: race, number of current charges, prior convictions, and gravity of offense.

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However, because it would require an extremely large to consider the effects of all four of these independent variables at once, the tendency in tabular analysis is to proceed by dropping one of these variables from consideration. Given our disciplinary biases, it would be rare sociologist who would in this situation eliminate the racial variable from his analysis; thus, one of legal variables will customarily be the first to go. This is, in fact, the pattern suggested in our review sentencing literature. any event, it is now that the In problem of causal inference emerges. Given that the variable dropped from the analysis is inter-correlated with the remaining independent variables, and thus likely responsible for some part of the latter variables! effect on final disposition, the causal meaning of any one of the following tables will be a matter of some doubt. particular, we will not be able to make any causal inferences regarding the impact of race, without engaging in a suspect assumption about its relationship with the missing legal variable.

All of this is not to say, of course, that tabular analysis is entirely without use to the social scientist. The technique remains a particularly valuable vehicle for the presentation of findings to both lay and professional audiences. In addition, tabular analysis provides a

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variables. Tables will be used for both of these purposes in the Chapters that follow, particularly Chapter Six. For the main part of our analysis, however, we will take advantage of the possibilities made available in regression analysis.

The use of regression techniques, under suitable conditions, allows an increase in the power, efficiency, and precision of data analysis. A basic feature of regression analysis that facilitates these improvements is the utilization of relations between pairs of variables to build up more complex relationships. A consequence is that there is almost no limit to the number of independent variables that can be examined at one time, a situation far different from that noted in tabular analysis. It is not surprising, then, that regression analysis has attracted a great deal of interest, in recent years, in the field of sociology.

basic in the use of regression analysis in A issue social research has consisted of evaluating the consequences of assuming equal intervals for ordinal scales. Regression analysis is premised on the measurement of variables on an level (i.e., in established and equidistant interval numerical quantities), while many of the variables we wish to consider are frequently measured on ordinal scales (i.e., values of these variables can be ranked in increasing or ingerni Satroldre To soder inelsersic

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numerical quantities). Two basic responses have emerged to this problem. The first is simply to treat ordinal variables as if they conformed to interval scales, by assigning numbers to the ordered categories. The second response involves a technique for testing the possible distortions introduced by such treatment.

Sanford Labovitz has probably been the most persuasive the treatment of ordinal variables as interval advocate of scales. It is argued that, "... treating ordinal variables as if they are interval has these advantages: (1) the use of more powerful, sensitive, better developed and interpretable known sampling error, (2) the retention of statistics with more knowledge about the characteristics of the data, and greater versatility in statistical manipulation..." (3) (1970:523). Labovitz subtantiates these arguments with empirical evidence that the treatment of ordinal variables as interval measures is accompanied by only small "errors," when the basis of comparison is the use of more conventional measures (1967:1970). The conclusion is that the benefits of this approach far outweigh the liabilities involved.

Boyle (1970) has gone one step further by explicating a technique, within the framework of regression analysis, for investigating the "distortions" introduced in treating

ordinal data as interval. This approach is variously known as "dummy variable" analysis1, the investigation of "degenerate dichotomies," and the use of "binary variables." Beyond explicating this technique, Boyle (1970) has contributed an empirical examination of the effects of analyzing a set of data in three ways: (1) with tabular techniques, (2) using dummy variable analysis, assigning intervals to ordinal variables and applying regression techniques. The results of this examination indicated that the tabular analysis led to misleading causal inferences; in contrast, the latter two approaches produced very similar findings. Boyle's conclusion reinforces that of Labovitz in suggesting that it is generally not dangerous to assume an interval scale based on ordered categories. All of this is best summarized in the advise of Bohrnstedt and "... when one has a variable which is measured at least at the ordinal level, parametric statistics not only can be, but should be, applied" (1971:132, emphasis added).

with this endorsement, our attention turns next to a consideration of the techniques of regression analysis itself. As a preface to this discussion it will be helpful to consider, first, the foundations of correlation analysis. Correlation analysis, like the method of crosstabulation, allows the researcher to measure the degree of covariation between two variables. However, instead of examining the

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joint frequency distribution of two variables in tabular form, correlation analysis indicates the strength of association through a process of statistical estimation, resulting in a <u>single</u> summary statistic: the correlation coefficient (r_{ij}) .

Having described the function of the correlation coefficient, it is a relatively simple step the to of multiple regression: conceptualization regression is an extension of the bivariate correlation coefficient to multivariate analysis. The correlation coefficient, or normalized simple regression coefficient, allows the researcher to measure the linear relationship between one independent variable and a dependent variable. Multiple regression allows one to study the linear relationship between a set of independent variables and a number of dependent variables while taking into account the interrelationships among the independent variables. If simple correlation coefficient is viewed as the continuous analog of two-way crosstabulation, then multiple regression is the continuous analog of a n-way crosstabulation" (Nie et al., 1970:175).

The guiding principle of multiple regression analysis involves producing a linear combination of independent variables that correlates as highly as possible with the

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dependent variable. The difference between the value of the dependent variable and the value predicted by the linear combination of the independent variables is known as the residual, or the error term. Representing the dependent variable as D, the independent variables as I's, the unstandardized regression coefficients as b's, a constant as c, and the error term or residual as r, the equation representing multiple regression is as follows:

 $D = b^{1}I^{1} + b^{2}I^{2} + ... + b I + c + r$

Our attention turns finally to a consideration of path coefficients. Path coefficients (p;;) are simply standardized regression coefficients. They are calculated by multiplying the unstandardized coefficient by the ratio of the standard deviation of the independent variable to the standard deviation of the dependent variable. Values of path coefficients range from one to minus one. A particular path coefficient, "...measures the fraction of the standard deviation of the endogenous variable (with the appropriate which the designated variable is directly sign) for responsible in the sense of the fraction which would be if this factor varies to the same extent as in the observed data while all other variables (including residual variables) are constant" (land, 1969:8-9).

A path coefficient, then, indicates the proportion of

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variance in the dependent variable that is <u>directly</u>, or solely, attributable to variance in a specific independent variable, controlling for all other variables assumed to be causally antecedent in the model.

coefficients linking variables in ordered series can be multiplied for the purpose of calculating indirect effects. For example, assume that we are interested in determining the indirect effect of race on disposition, as this effect is mediated by the intervening variable prior record. If race (X1) is linked to prior record (X2) by a path coefficient P21; and prior record (X2) linked to final disposition (X3) by a path coefficient P32; then the product of these path coefficients (P21 P32) will indicate the indirect effect of race, operating through the variable prior record, on final disposition.

Manipulation of correlation and path coefficients in the terms discussed forms a basis for the data analysis in the chapters that follow. efficie the dependent at court.

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FOOTNOTES

**Dummy variable analysis involves recoding a parent variable in a dichotomized form, with the categories coded as "0" and "1". For example, to treat a trichotomous variable X (originally coded as 0,1, and 2) as a dummy variable, we need two recodings of the variable as indicated in the following table:

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Parent Variable	Reco	dings
X	X 1	χz
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1	O	1
0	0	0
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If we are interested in the regression on X of some dependent variable Y, we can then study the multiple regression on Y of the corresponding pair of dummy variables. Using this procedure, the two dummy variables will separate out the effects of first moving from the lower to middle category, and then from the middle to the upper category of X (cf. Boyle, 1970).

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CHAPTER IV:

PROSECUTION AND SENTENCING: AN ANALYSIS OF
TRANSACTIONS IN A PROSECUTOR'S OFFICE

PROSECUTION AND SENTENCING: AN ANALYSIS OF TRANSACTIONS IN A PROSECUTOR'S OFFICE

A sociological concern with the process of criminal sentencing is well-demonstrated by the studies reviewed in Chapter Two. Similarly well-established is a sociological interest in the process of criminal prosecution (e.g., Newman, 1956; 1966; Miller, 1970). Surprisingly, however, the two concerns have not been linked systematically in empirical research. The tendency, instead has been to treat sentencing and prosecution as separate dependent variables, to be linked individually to other variables in the legal process. In this Chapter, we will combine consideration of prosecution and sentencing in a single path model. Before turning to the analysis itself, however, we will review several approaches taken to the study of criminal prosecution.

THE LITERATURE

The process of criminal prosecution is a subject of international concern (Dando, 1970; Grossman, 1969; 1970; Jescheck, 1970; Lafave, 1970), an issue of constitutional debate (Chambliss, 1970), a forum for social theoretical speculation (e.g., Blumberg, 1967a; Chambliss and Seidman, 1971; Sudnow, 1965), and a focus of empirical research (e.g., Vetri, 1974; Newman, 1956). In this discussion, we

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will confine our attention to several theoretical and empirical discussions of criminal prosecution.

Two dominant theoretical approaches can be discerned.

Although the approaches are not mutually exclusive, they differ in emphasis, focusing on two distinct concepts: bureaucratization and class conflict.

Blumberg (1967a) focuses on the role bureaucratization in Anglo-American systems of criminal justice. Drawing on Weber's discussions of the process of rationalization in modern legal systems, it is argued that the proper focus for study lies in the organization of the criminal court: "Sociologists and others have focused their attention on the deprivations and social disabilities of such variables as race, ethnicity, and social class as being source of an accused person's defeat in a criminal court. Largely overlooked is the variable of the court organization itself, which possesses a thrust, purpose, and own" (1967a:19). Blumberg direction of its argues that bureaucratic demands for efficiency exert exogenous an influence on the prosecution process. These organizational operationalized proceduraly through the are actions of defense counsel, client and prosecutor the process of plea negotiation (1967b).

Chambliss and Seidman differ from Blumberg in assigning

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intervening role to procedural variables in the causal an sequence (1971). Arguing from a Marxian view of class conflict, negotiation between defense counsel and prosecutor conceptualized as a mediating mechanism that facilitates of the powerful and protection exploitation of the powerless. Procedural variables thus assume an endogenous position, subject to the direct effects of the social class position of the defendants involved: "How 'bargain' one can strike with the prosecutor in the pretrial confrontations is a direct function of how politically and economically powerful the defendant is. In terms of day-today prosecutorial activities, what this comes that the lower class, indigent, and minority group member is most prosecuted for his offenses...." likely be to (1971:412).

Moving from theory to research, two empirical studies are available for review. Vetri (1964) has published results of a survey questionaire completed by prosecutors in forty three states. It is important to note that the response rate to the questionaire was low (40 per cent), and also that the accuracy of the responses obtained is dependent on the honesty and perceptiveness of the respondents involved. Nonetheless, the findings are of interest. Among findings relevant to our discussion, it is reported that prosecutors consider prior convictions and multiple charges as important

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factors in the decision to alter charges.

Newman's (1956) study of the prosecution process used its data source the recollections of ninety-seven felons under active sentence. Although this study is also by the accuracy of the respondents' reports, it is again of importance in terms of the insights offered for further Data reported by Newman cast doubt on the classresearch. based hypotheses of Chambliss and Seidman. For example, when defendants were compared in terms of their initial pleas, no significant differences were found by education, occupation, and residence. Similarly, "An analysis of the sample offenders showed no clear cut categories separating bargained and non-bargained convictions" (1956:789). Nevertheless, Newman reports that among those cases where negotiations were perceived to have occured, approximately 33 per cent involved communication regarding alteration of charges, while 67 per cent involved discussion of sentencing considerations. A concluding hypothesis suggests that, way bargaining now works, the more experienced criminals can manipulate legal processes to obtain light sentences and better official records (1956:790).

Our discussion of the literature relating to criminal prosecution suggests several different themes. Chambliss and Seidman clearly hypothesize that class conflict,

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operationalized through the extra-legal attributes of the defendants, is a dominant disadvantaging factor in the process of criminal prosecution. Just as clearly, Blumberg argues that the prosecution process is guided by a set of bargaining procedures whose thrust is constrained more by organizational priorities than class interests. Newman, in contrast, argues that it is the "conviction-wise" offender who benefits from the prosecutorial process. Finally, Vetri indicates that a number of more conventional legal variables must be considered in discussions of criminal prosecution.

Unfortunately, although the literature surrounding the prosecution process is helpful in isolating potentially important variables, it does not suggest a set of propositions sufficiently precise to allow a <u>deductive</u> model-testing approach to the research problem. In response to this situation, techniques of path analysis will be used <u>inductively</u> in determing causal linkages between the variables concerned (Heise, 1969).

THE SAMPLE AND METHODOLOGY

The sample consists of 1018 cases drawn at random from files covering a six month period of prosecutions in the city of Edmonton. The 1018 cases involved over 1500 charges. Our primary interest, as in previous studies, was in the offender as the unit of analysis. Thus, it was necessary to

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select the salient charge facing each offender. This was accomplished by choosing the offense assigned the severe sentence. If no charge received sentence (i.e., if all charges were dismissed), or if the sentences were of severity, the offense provided the most severe sentencing option by statute was chosen. Three groups of variables, presented independent in Table XIX, are in considered in the analysis. The instrument used collecting the data is presented in Appendix I. A brief discussion of each set of variables follows, with the order of presentation representing an assumed sequence of temporal and/or logical priority.

first group of variables consists of extralegal offender characteristics: (X1) socio-economic race and status (X2). The racial background of the defendant was indicated as (1) white or (2) Indian or Metis on the designation as such in the case file. 1 The presence of persons of Indian descent in the sample can be considered an asset in this part of our investigation. In comparison other North American groups, it can plausibly be argued that Indian and Metis defendants understand less, and resist least, their fate in the hands of the law. Thus, if there is racial disadvantage in criminal prosecution, it would likely that Native persons would be among those experiencing effects. Additional information on the current the worst

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TABLE XIX: VARIABLES IN THE PROSECUTION ANALYSIS

Notation	Variable	Scale				
Хт	Race	White	(1)	Indian & Metis	(2)	
Χs	Socioeconomic Status (Index: Edward's Social-Economic Grouping of Occupa- tions)	Professional, Technical and Related Workers Business Managers, Officials, and Proprietors Clerical and Related Workers Craftsmen, Foremen, and Related Workers Operatives and Related Workers Laborers				
χз	Prior Arrests*	None	(1)	One or More	(2)	
x*	legal Seriousness of Initial Charge (measured as maxi- mum statuatory sen- tence)	6 Months 18 Months 2 Years 3 Years 5 Years	(1) (2) (3) (4) (5)	7 Years 10 Years 14 Years Life or Death	(6) (7) (8) (9)	
χѕ	Number of Charges	One of two Three Four Five	(1) (2) (3) (4) (5)	Six Seven Eight Nine or More	(6) (7) (8)	
Χę	Defense Counsel	NO	(1)	Yes	(2)	
χ7	Initial Plea	Guilty Plea Reserved or Withheld Not Guilty				
χs	Charge Alterations	No Charge Alte Secondary Char Primary Charge	ge Alte:		(1) (2) (3)	

*Ideally, it would have been preferable to consider prior record as an interval variable. Unfortunately, prosecutor's office files contained this information in a dichotomized form.

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TABLE XIX, CONTINUED

lotation	Variable	Scale					
X ₉	Final Disposition	Charge Dismissed Absolute Discharge Conditional Discharge or Fine Probation Prison	(1) (2) (3) (4) (5)				

or customary occupations of the defendants was gathered from the files, and socio-economic status was determined according to Edward's Social-Economic Grouping of Occupations.²

The second group of variables includes legally defined offender and offense characteristics: prior arrests (X^3) , legal seriousness of the initial charge (X^4) , and the number of charges (X^5) . Information regarding the presence of prior arrests and the number of charges currently facing the offender was obtained directly from the files. The seriousness of the initial charge selected for analysis was operationally defined in terms of the maximum sentence provided for the offense in the Criminal Code of Canada (Martin et al., 1972).

The third group of variables involves procedural factors: presence of defense counsel (X⁶), initial plea (X⁷), and charge alteration (X⁹). The presence or absence of defense counsel and the nature of the initial plea were recorded from the files. The type of initial plea was then ranked according to the intensity of the denial of guilt indicated: (1) plea of guilty, (2) plea reserved or witheld, (3) plea of not guilty.

Measurement of charge alteration presented a more difficult problem. Discussions of charge alteration have

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The second group of variables includes legally deficed income, and offense characteristics; order arrests (12), [13], [14] is seriousness of the instial charge (14), and the number of charges (15), Information regarding the presence .. prior sharpes (15) and the number of charges currently tacing a

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The third erous connect (x*), intrial passes, processes, processes, presence of defense connect (x*), intrial passes, (x*), and charge alternation (x*). The passes of charge and the lead of the thirtial plan verse confed from the Hales. The type of intitial plan was then the denial of quilt ked amonding to make intensity of the denial of quilt.

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typically focused on the distinction between situationally and necessarily included offenses (Sudnow, 1965), the nature interaction of between the negotiating parties (Blumberg, 1967b), and the disjunction between expected and effected sentencing "considerations" (Newman, 1956). However, in the jurisdiction studied, judges customarily sentence offenses concurrently. Thus, more important than any of the previously mentioned concerns, for the purpose of predicting final disposition, is an indication of particular charge being altered. In short, the important consideration for the defendant is whether or most serious charge facing him is changed. Thus, charge alterations are ranked in our analysis as follows: (1) charge alteration, (2) secondary charge alteration, (3) primary charge alteration.3

The dependant variable for our analysis is the final disposition received by the offender. Ranking of variable was determined by the degree of guilt civil liberties involved in the restriction of final disposition (cf. Green, 1961). Thus, the distinction between charge dismissal and absolute discharge is based acknowledgement of guilt involed in the latter disposition. Each of the following dispositions conditional discharge or fine, probation, and prison involves a successive increase in the curtailment of the civil liberties of the offender. •

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The technique used in the analysis of the data is stepwise multiple regression. Dichotomized measures included in the analysis are treated as "dummy variables" (Boyle, 1970), while the remaining ordinal variables are assumed to approximate the characteristics of interval measures. This strategy follows from the discussion presented in Chapter Three.

THE ANALYSIS

Correlation coefficients (r;j) relating the nine variables involved in the analysis are presented in Table XX. Using step-wise multiple regression, this matrix forms the basis for the calculation of the path coefficients (P;j) presented in Table XXI.

As indicated earlier, because previous discussions of prosecution and sentencing are ambiguous in the causal linkages proposed, an inductive strategy is used in developing the path model presented in Figure I. Each endogenous variable is in turn considered as a dependent variable and regressed on all causally antecedent independent variables. Path coefficients are selected for the model (from Table XXI) on the basis of two criteria: (1) attainment of statistical significant at the .01 level6, and (2) explanation of more than one per cent of the variation in

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The technique was in the assissed assures included the analysis are tracted as "dumny variable: (boyle, 1976), while the remaining ordinal variables are assumed strate the characteristics of interval reasures. Late strategy follows from the discussion presented Taptes

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TABLE XX:

	CORRE	CORRELATION	COEFFICIENTS	IENTS FOR		PROSECUTION	VARIABLES*	·ES*
	XZ	×3	*	Χe	X 6	X 7	X 8	6 X
X1	.15	.17	.11	. 0 a	.01	.03	PO*-	•
X2		<01	. 16	<01	03	01	08	•
E X			07	.12	90.	. 65	.05	•
× *				01	. 17	.26	<01	6
X S					. 20	90.	. 35	•
X6						• 55	.26	0
X 7							.27	2
X 8								2
*N=1018	018							

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TABLE XXI:

PATH COEFFICIENTS FOR PROSECUTION VARIABLES

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X X	<.01	03	40.	. 18**	65	. 53*			. 34	•
X 6	01	.05	.05	* 18*	. 20**				.07	. 0 0 1 1 0 0 1
XS	<.01	<01	.12**	<01					.01	
* X	. 10	. 14**<01	90.						40.	significant significant per cent of
Хз	. 18*	03							т О	N N D4
X2	. 15**								. 02	Statistically Statistically more than one variable.
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the endogenous variable. The resulting model can be discussed in terms of the three groupings of variables originally described.

Our attention is directed first to the three procedural variables: defense counsel, initial plea, and charge alteration. Charge alteration has an inverse direct effect on the final disposition (P98) of -.30, indicating that as the primacy of charge alteration increases, the severity of the final disposition diminishes. In different terms, those who experienced charge alterations were more likely to receive lenient dispositions. Similarly, the defendant's initial plea has an inverse direct effect on final disposition (p97) of -.31. Assertion of innocence, in short, is linked to favorability of disposition.

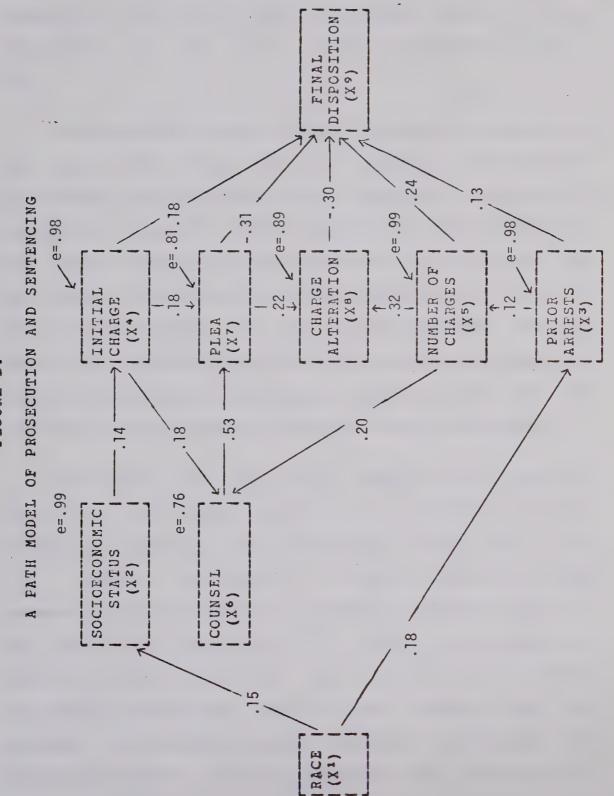
The nature of the causal sequence is elaborated with consideration of the role of defense counsel. Presence of counsel operates indirectly through plea and charge alteration again to effect inversely the severity of final disposition. With initial plea alone as the mediating variable, the indirect effect of defense counsel on final disposition (P⁷⁶P⁹⁷ = .53 X -.31) is -.16. Added to this finding is the indirect influence of defense counsel operating through initial plea and charge alteration (P⁷⁶P⁸⁷P⁹⁸ = .53 X .22 X -.30 = -.03). The resulting

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The nature of the causal sequent is elaborated and independent of the node of defense counsel. Presence of counsels of the country of the selection again to effect inversely the severity of the disposition, with initial plea flore as the selection the indirect effect of defense counsel on the calculating the indirect effect of defense counsel on the calculating the indirect effect of defense counsel on the calculating the the counsel on the calculating the the counsel on the calculating the calculating the calculating the calculating the calculation of the calculations.

A PATH MODEL OF PROSECUTION AND SENTENCING FIGURE I:





estimate of the indirect effect of defense counsel on final disposition is -.19 (i.e., p76p97 + p76p87p98 = -.16 + -.03).

Our focus shifts next to legal variables included in the model. Each legal variable directly effects final disposition, as well as directly or indirectly effecting a procedural variable. Final disposition is linked with: (1) the initial charge, by a path coefficient (P94) of .18; (2) the number of charges, by a path coefficient (P95) of .24; and (3) prior arrests, by a path coefficient (P93) of .13. Thus, the seriousness of the initial charge, the number of immediate charges, and the number of prior arrests are all substantively and causally related to final disposition.

of the initial charge and the number of Seriousness charges are also related directly to the presence of defense counsel by respective path coefficients (P64P65) of .18 and Further, the number of charges operates through .20. presence of defense counsel to produce an indirect effect on the initial plea (P65P76) of .11. Finally, the number of offender has a direct effect on charge charges facing an alteration (P58) of .32. As we might expect, then, the presence of multiply charged offenses is directly and indirectly related to the probability of alteration in charges.

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attention turns finally to the role of extra-legal offender characteristics in the prosecution and sentencing process. Links between these and other variables in the model are as conspicuous in their absence as they are their presence. For example, it is important to note that there are no direct links between race or socioeconomic status and the three procedural variables included in the Percentage comparisons, by race, for the procedural variables, are provided in Table XXII. Thus, while 33.4 per cent of the white defendants counsel, 35.1 per cent of the Native defendants were also represented by counsel; while 26.2 per cent of the defendants entered pleas of not quilty, 30.8 per cent of the Native defendants also denied their guilt: and while 9.6 per cent of the whites received primary charge alterations, 9.1 per cent of the Native persons similarly benefited from alterations in primary charges. These findings suggest that Indian and Metis defendants, no less than their counterparts, are the beneficiaries of the procedural maneuvers that characterize the prosecutorial process.8

It is of further importance to note that extra-legal offender characteristics are <u>not</u> directly linked to final disposition in our model. In fact, the <u>only</u> connection of extra-legal offender characteristics to the remainder of the

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TABLE XXII:

PROPORTION OF NATIVE AND WHITE DEFENDANTS WHO RETAIN COUNSEL, DENY GUILT,

AND RECEIVE PRIMARY CHARGE ALTERATIONS

Frocedural Variables

Primary Charge Alteration	9.6%	9.1%
Initial Plea of Not Guilty	26.2% (226)	30.8%
Defense Counsel Retained	33.4% (291)	35.1%
Race	White	Indian & Metis

model is through the mediating influence of legal variables. Thus, race is linked directly to prior arrests by a path coefficient (P³¹) of .18, while socioeconomic status has a direct effect on initial charge of .14. Finally, the direct effect of race on socioeconomic status is indicated by a path coefficient (P²¹) of .15. Summarizing, the effect of race and socioeconomic status on prosecution and sentencing is indirect, and mediated by legal considerations.

DISCUSSION AND CONCLUSIONS

The results of our analysis suggest some support for Blumberg's focus on the role of organizationally constrained procedures in the prosecutorial and sentencing process. Procedural variables were prominantly positioned in the path model developed, with the presence of defense counsel, the initial plea, and charge alteration all playing an important role in determining final disposition. Remaining findings provided mixed support for the alternative viewpoints discussed at the outset of this Chapter.

In contrast with the class-conflict perspective represented in the work of Chambliss and Seidman, race and socio-economic status were <u>not</u> demonstrated to be influential in the prosecution and sentencing process. This aspect of our analysis replicated several of Newman's findings. Thus, no direct links were found between extra-

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rect effect on initial charge of .14. Finally, the stress feet of race on socioeconcid status is independent (P41) of .15. Gurnerizing, the arrest and socioeconceic status of prosecution.

DISCUSSION AND CONCLEDED

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legal offender characteristics and the presence of defense counsel, initial plea, charge alteration, or final disposition. In sum, the argument that "bargain justice" is a password for "class justice" was unsupported.

The effects of social class and race in our model were indirect and mediated by the intervening influence of legal variables: prior arrests, initial charge, and number of charges. These variables, in turn, were linked directly and indirectly to procedural variables in the model. Finally, each of the legal variables was linked directly to final disposition.

Newman's hypothesis that "conviction-wise" offenders are at an advantage in the prosecution process. The relationship between prior record and initial plea was insignificant. Similarly, the relationship between prior record and charge alteration was indirect and weak. Nonetheless, confirmation was provided for the expectation that offenders with more extensive cases (i.e., involving multiple charges) are more likely to experience alterations in charges. This finding suggests a possible tendency to "over-charge" offenders in anticipation of "rewards" to be distributed later in the bargaining process. This type of pattern would be compatible, of course, with Blumberg's discussions of the

Saged offender wherefore the constant of an antended the constant of an end and the constant of an end of an end of an end of the "barders that "barders justice" of assured for "class justice" was unsupported.

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FOOTNOTES

1 Persons of Indian and Metis background are combined in one category in the same sense that persons of mixed white and Negro background are usually treated synonymously with Negroes, for the purpose of study. The concern is not with the biological accuracy of these designations, but rather with the presumed consequences of the attribution of racial status.

2For a discussion of this scale, see Miller (1970).

The frequency distribution of charge alterations is as follows: (1) no charge alteration: N=594; (2) secondary charge alteration: N=326; (3) primary charge alteration: N=98.

*The frequency distribution of final dispositions is as follows: (1) charge dismissal: N=142; (2) absolute discharge: N=25; (3) conditional discharge or fine: N=678; (4) probation: N=74; (5) prison: N=99.

5A preliminary effort to treat the ordinal measures as dummy variables did not yield large differences in the path coefficients calculated; this approach was therefore terminated.

The F-test is used as the test of significance. For a discussion of this test, see Blalock (1960:266-269).

7For a discussion of the liabilities of using significance tests alone as the criterion for selecting causal paths, see Heise (1969:61) and Chapter Two of this thesis.

The contribution of legal aid activities to these findings is uncertain.

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CHAPTER V:

THE PRESENTENCING PROCESS: THE ROLE OF THE PROBATION OFFICER

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THE PRESENTENCING PROCESS: THE ROLE OF THE PROBATION OFFICER

Probation is the legal version of a second freedom to try again, offering the offender the providing society the opportunity to avoid the costs of imprisonment. The use made of probation, then, has important consequences for both conceptions of individual justice and of social efficiency. Recognizing this, of criminal justice have developed American systems presentencing procedures designed to assist the judiciary in its decision-making responsibilities. The most popular of these judicial aids involves the use of probation officers to conduct presentence investigations. These investigations are recorded in the form of sociolegal histories, usually culminating in a recommendation for disposition. Attention is directed in this chapter to the involvement of the probation officer, and the influence of his actions, in this decision-making process.

STUDIES OF THE PRESENTENCING PROCESS

While follow-up studies of the effectiveness of probation are common, research relating to the presentencing responsibilities of probation officers is scarce.¹ The research that is available is largely exploratory and descriptive. For example, the largest study of the

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presentencing process is reported in a series of monographs, authored by Lohman, Wahl, and Carter, titled the <u>San</u> <u>Francisco Project Series</u>. Securely established in this research is the close association between final dispositions and presentence recommendations, and the relationship of current offense and prior record information to these recommendations (Lohman <u>et al</u>., 1966). Also suggested is the possible importance of employment information to presentence recommendations. The interpretation of these findings, however, is correlational, rather than causal.

In an attempt to determine an order in the probation officer's considerations, Carter (1967) developed a "decision-game" to study presentence recommendations. Five experimental cases were content analyzed into twenty-four separate items of indexed information. Probation officers were then asked to select among the items in the order usually followed in reaching a decision. The results again indicated the salience of current offense and prior record information in the formation of recommendations. However, a series of other items relating to personal stability were also selected frequently in the decision-making process.

A final discussion of the presentencing role of the probation officer is provided by Carter and Wilkins (1967). This study again underlines the strong relationship between

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presentence recommendations and final dispositions, and suggests the inference that probation officers rather than judges may be a source of the disparities frequently observed in sentencing patterns. Carter and Wilkins emphasize the importance of this suggestion for future sentencing research.

examines the role of the probation officer in the sentencing process. Attention is again given in this analysis to three types of variables: extra-legal offender characteristics (racial background and socio-economic status), legal offender and offense characteristics (prior convictions, offense, and number of charges), and procedural factors (perception of demeanor, perceived success prospects, and recommendation for sentence). Finally, the dependent variable is again the final disposition of the case.

THE SAMPLE

The sample considered in this Chapter consists of questionnaires completed by probation officers in all offices of the Adult Probation Department of Alberta, during a four month period from February 1 to June 1, 1973. 1000 questionaires were initially mailed to all probation offices in the Province, with each office receiving a proportional number based on the average monthly volume of presentence

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reports prepared. The Senior Probation Officer in each office was in turn asked to distribute the questionaires to his officers in proportion to the number of presentence reports typically completed in a one month period. Each questionaire was to be filled out simultaneously with the presentence report involved, and returned immediately in a pre-addressed envelope provided. 761 questionaires were returned in this manner, indicating a response rate of more than 76 per cent. This rate of response compares well with other survey studies of judicial decision-making², and favorably with survey research in general (see Shannon, 1948; Karlinger, 1964; Leslie, 1972).

The 761 questionaires report information drawn from presentence reports involving 1161 offenses. As in the previous Chapter, the offender is the unit of analysis. This was accomplished by selecting for consideration the offense that received the most severe sentence. In case of "ties," the offense provided the most severe sentencing option by statute was chosen. Consideration of other charges facing an offender was provided by indicating, for each offender, the number of charges involved.

The questionaire, reproduced in Appendix II, was designed to follow the format used in preparation of presentence reports. Two exceptions to this pattern involve

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an item asking for the probation officer's evaluation of the client's prospects for successful probation adjustment, and a set of five items asking the officer's assessment of the client's demeanor. These items are discussed more extensively in the section that follows.

THE VARIABLES

The variables considered in this analysis, and the scales used in their measurement, are listed in Table XXIII.

A brief discussion of each variable follows. The order of discussion represents an assumed temporal sequence.

Extra-legal offender characteristics included in the analysis are race (X1) and socio-economic status (X2). The racial background of the offender is indicated by the probation officer's designation as (1) white or (2) Indian or Metis. Edward's Social-Economic Grouping of Occupations again provides an index of socio-economic status. Probation officers were asked to place offenders in one of the six scale groupings on the basis of the offender's occupation, when employed.

Legal offender and offense characteristics considered in the analysis included prior convictions (X^3) , offense seriousness (X^4) , and the number of charges (X^5) . Probation officers were asked to indicate the number of previous

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THE VARIABLES

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TABLE XXIII: VARIABLES IN THE PRESENTENCING ANALYSIS

Notation	Variable	Scale			
χ1	Race .	White	(1)	Indian & Metis	(2)
χ2	Sccio-economic Status (Index: Fdward's Social- Economic Grouping of Occupations)	Professional, Related Worke Business Manag and Proprieto Clerical and F Craftsmen, For Workers Operatives and Workers Laborers	ers jers, Of: ors Related (ficials, Workers nd Related	(1) (2) (3) (4) (5) (6)
Хз	Prior Convictions	One Two Three Four Five	(1) (2) (3) (4) (5)	Six Seven Eight Nine or More	(6) (7) (8) (9)
X 4	legal Seriousness of Offense (Measured as Maxi- mum Statuatory Sentence)	6 Months 18 Months 2 Years 3 Years 5 Years	(1) (2) (3) (4) (5)	7 Years 10 Years 14 Years Life or Death	(6) (7) (8)
χѕ	Number of Charges	One Two Three Four Five	(1) (2) (3) (4) (5)	Six Seven Eight Nine or More	(6) (7) (8) (9)
χ.	Ferception of Demeanor (5 Item Gutt- man Scale)	Very Favorable Favorable Neutral Unfavorable Very Unfavoral			(1) (2) (3) (4) (5)
¥7	Evaluation of Prospects for Success on Probation	Very Favorable Favorable Neutral Unfavorable Very Unfavorable			(1) (2) (3) (4) (5)

TABLE XXIII, CONTINUED

Notation	Variable	Scale	
χ	Recommendation	Absolute Discharge Conditional Discharge or Fine Probation Prison	(1) (2) (3) (4)
Х э	Final Disposition	As Above	

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convictions of each offender on the basis of information made available to them through the R.C.M. Police Crime Index. Offense seriousness was measured in terms of the maximum sentence provided for the specific offense in the Criminal Code of Canada (Martin et al., 1972). The number of charges facing an offender was indicated by a simple count of the offenses listed for each offender on the questionaire involved.

The three procedural variables examined in the analysis are the probation officer's perception of the offender's demeanor (X6), evaluation of the prospects for a successful probation adjustment (X7), and recommendation for sentence (X8). Five items were included on the questionaire to assess probation officer's perception of the offender's the demeanor. Thus, the officer was asked to indicate if the "understands the charges," "is polite," "is offender: cooperative," "acknowledges his quilt," and indicates remorse." A computer program (Nie et al., 1970: Chapter 16) was then used to test the adequacy of these items, as ordered, in the formation of a Guttman Scale. 3 The results of this analysis were a coefficient of reproducibility of .99 and a coefficient of scalability of .91. These figures are well above conventional standards used in the assessment of Guttman Scales. On this basis, a new variable, "demeanor," was created out of the original five items.

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Assuming that recidivism was a major concern in developing recommendations, an item was included on the questionaire to indicate the officer's evaluation of the offender's prospects for success, if given probation. Officers were given a choice on a Likert type scale of response to record their evaluations.

The role of the probation officer in the presentencing process culminates with his recommendation of sentence to the court. The probation officers were asked to indicate this recommendation for each case considered. Following Green (1961:23), the recommendations were ranked in terms of the degree of deprivation of civil freedom involved. This criterion resulted in a scale of four types of recommended sentences: (1) absolute discharge, (2) conditional discharge or fine, (3) probation, and (4) prison. Again following Green, when a case resulted in more than one type of sentence (e.g., probation and prison) the categorization was in terms of the more severe type of penalty.

Finally, the dependent variable for the analysis is the disposition imposed as sentence (X9). It is standard practice in the Province to indicate the final disposition at the end of the presentence report. This was correspondingly the last item of information requested on the questionaire. The responses were coded in a manner

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identical to the recommendations for sentence.

RECOMMENDATIONS AND DISPOSITIONS

Earlier studies of the presentencing process have repeatedly emphasized the strong relationship between the recommendations for sentence made by probation officers and the final dispositions of the courts. The relationship between these two variables in the current study is shown in Table XXIV. Before discussing this Table, however, it is important to note that the total number of cases involved is somewhat smaller than the number of offenders This difference reflects the explicit original sample. policy in one jurisdiction of the Province not to ask for a recommendation from the probation officer.6

Most striking in Table XXIV are the large percentages and cell frequencies present in the diagonal stretching from the upper left hand corner to the lower right hand corner of the table. Each of these cells represents a high level of agreement between recommendation and disposition, ranging from a low of 66.7 per cent agreement to a high of 85.4 per cent agreement. Summing the cases of agreement, and dividing by the total number of cases in the Table, reveals that the probation officers and judges are in agreement 79.7 per cent of the time. While this level of agreement is not quite so high as that revealed in earlier studies, it is nonetheless

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TABLE XXIV:

CACSS-CLASSIFICATION OF PROBATION OFFICERS. RECOMMENDATIONS

AND JUDICIAL DISPOSITIONS

Final Dispositions

	60	ω	321	82	502	
Prison	(O) %3	3.7%	6.2%	85.4%	8	
Probation	5.6%	23.5%	82.2% (264)	11.6%	293	
Conditional Discharge or Fine	27.8%	66.7%	16.0% (32)	2.4%	೯	
Absolute Discharge	66.7%	6.2%	.6%	1.2%	23	1.91
Recommendations	Absolute Discharge	Conditional Discharge or Fine	Frobation	Prison		Chi Square = 611.91 P<.001 Gamma = .88

indicative of a high degree of consensus.

A second concern with Table XXIV involves consideration of the instances when probation officers and judges are disagreement. By summing the cell frequencies to the right of the original diagonal, and repeating this procedure on the left hand side of the diagonal, we are provided figures indicating the instances in which judges are more or than probation officers in their sentencing punitive decisions. In 48 instances, judges in the sample probation officers' recommendations in the severity of sentences imposed; in 54 instances, the judges lenient than the probation officers. In addition to a high level of agreement between the two parties, then, there is also indication of balance in the directions of their an disagreement.

A MODEL OF THE PRESENTENCING PROCESS

Given the strong relationship between disposition and recommendation, our attention shifts next to the development of a path model linking remaining elements of the presentencing process to this recommendation, and in turn, to final disposition. The strategy is to explore inductively the influence of five extra-legal and legal attributes of the offenders (race, socio-economic status, prior convictions, offense seriousness, and number of charges),

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TABLE XXV:

	CORRELATION		COEFFICIENTS	ENTS FOR	PRESENTENCING	ENCING	VARIABLES*	* S E
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X		.10	. 16	.02	. 11	.22	.24	.16
£×			.08	.08	.07	14.	35	.36
* ×				. 16	03	.12	.31	.30
X 5					02	-	.20	. 19
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X 7							.52	. 42
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more than one variable.

TABLE XXVI:

PATH COEFFICIENTS FOR PRESENTENCING VARIABLES

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X 8	.12** \$.15**	*60°	. 13**	.22**	. 13**	63	* * * * *		07.	and explains the endogeno
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ΧS	12**	<.01	*60.						*0	tat tr tr
* X	07	* 16*	.08						70.	significant significant per cent of
ХЗ	* * * *	80.							÷0.	
X2	* * * * * * * * * * * * * * * * * * *								Cumula- tive R2*** .02	Statistically Statistically more than one
	X	X2	ХЗ	*	X 2	% X 6	X X	×	Cumu tive R2**	* *



operating through three procedural variables (the probation officer's perception of demeanor, evaluation of prospects for successful probation adjustment, and recommendation for sentence), in determination of the dependent variable: final disposition.

We begin this process by providing the correlation matrix presented in Table XXV. Correlation coefficients (r;;) reported in this Table form the basis for a step-wise multiple regression analysis used in calculating the path coefficients (P;;) reported in Table XXVI.

Directing our attention first to the correlation coefficients reported in Table XXV, we are reminded of the dramatic influence of the probation officer's presentence recommendations: recommendations account for approximately 50 per cent of the variation in final dispositions $(r^{98})^2 = (.72)^2 = .52$. The salient correlate of recommendation, in turn, is the probation officer's evaluation of the offender's success prospects. Success prospects account for 27 per cent of the variation in recommendations $(r^{87})^2 = .27$. Following success prospects in the zero-order strength of their relationship with recommendation are prior record $(r^{83})^2 = .12$, offense seriousness $(s^4)^2 = .10$, race $(r^{81})^2 = .06$, socio-economic status $(r^{82})^2 = .06$, number of charges $(r^{85})^2 = .04$, and perceived demeanor $(r^{86})^2 = .02$. These figures

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of the variables included in this analysis.

Our next step is to use the path coefficients reported in Table XXVI to develop a path model of the presentencing process. Path coefficients are selected for representation in this model on the basis of the same criteria used in Chapter IV: (1) attainment of statistical significance at the .01 level, and (2) explanation of more than one per cent of the variation in the dependent variable.

resulting path model is presented in Figure II. Causal chains leading to final disposition in this model can be discussed in terms of the three groups of variables Looking first at the procedural variables, a involved. series of moderately strong direct effects are observed. This sequence leads from the probation officer's perception of the defendant's demeanor to perceived prospects for a successful probation adjustment (P76=.30); from assessment to the recommendation for sentence (P87=.38); and from recommendation to final disposition (P98=.66). Each of the links in this chain also interprets an indirect effect of a preceding variable on a variable that follows. For officers' perceptions of example, probation success prospects have a relatively strong indirect effect on final disposition. This indirect relationship is mediated by the es do eb in la lymina.

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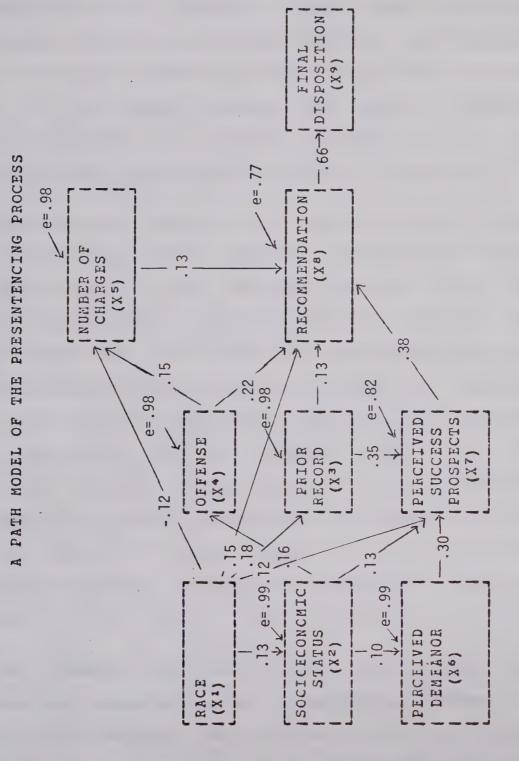
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FIGURE II:



intervening influence of the probation officers recommendations for sentence. Thus, when the path coefficients involved are multiplied (P87P98), the product (.38 X .66) is a measure of the strength of the indirect effect: .25. This finding indicates that probation officers recommendations are the important intervening link in translating their perceptions into judicial dispositions.

Expanding our attention to legal variables in the model, we encounter several important relationships. First, of the offender has both a direct and the prior record indirect effect on the recommendation for sentence. direct effect of prior record on recommendation (P83) is .13. The indirect effect is equal in strength and operates through the probation officer's perception of the prospects for a successful probation adjustment $(P^{73}P^{87}=.13)$. short, the probation officer seems to use past performance as a predictor of future outcomes. The defendant's offense the number of charges against him also influence directly the probation officer's recommendation (P84=.22; p85 = .13).

Our attention turns finally to the rather complex role of extra-legal variables in the presentencing process. To simplify this discussion, we will focus on the role of race, treating socio-economic status as an intervening variable.

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Race has both a direct (P⁸¹=.15) and indirect effect on the recommendation for sentence. Although neither of these effects taken separately is strong, taken together they are of interest and concern.

The <u>indirect</u> effect of race on recommendation has legal, extra-legal, and procedural components. Among legal considerations, the number of charges, prior record, and the instant offense all play an intervening role. The influence of each of these variables is indicated in the equations that follow:

- (1) P⁵¹P⁸⁵ = -.016 (race → number of charges → recommendation)
- (2) $P^{31}P^{83} = .023$ (race \neq prior record \neq recommendation
- (3) P³¹P⁷³P⁸⁷ = .023 (race → prior record → success prospects → recommendation)
- (4) P²¹P⁴²P⁸⁴ = .004 (race + socio-economic status + offense + recommendation)

The sum of these indirect effects is .034; legal variables, then, mediate in a small way the relationship between race and recommendation.

Socio-economic status, perception of demeanor, and perceived prospects for successful probation adjustment mediate further the relationship between race and recommendation. Three equations reveal the influence of these variables:

- (1) P⁷¹P⁸⁷ = .046 (race → success prospects → recommendation)
- (2) P21P72P87 = .608 (race → socio-economic status →

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success prospects + recommendation)
(3) P21P62P76P87 = .001 (race + socio-economic status + demeanor + recommendation)

The sum of the indirect effects represented by these equations is .054. This figure added to the direct effect of race on recommendation, indicates a total effect, exclusive of legal considerations, of .20.8 Race, then, does have a modest direct and indirect effect on recommendations for sentence.

DISCUSSION AND CONCLUSION

Findings reported in the preceding pages indicate that the formation of presentence recommendations is an important, but complex, process. Preliminary data reported in Table XXV suggested that procedural variables, specifically the probation officer's recommendation and his evaluation of the offender's prospects for a successful probation adjustment, predominate as influences in the presentencing process. legal variables. offense Two seriousness and prior record, also appeared to exert an influence in the formation of recommendations: the extralegal variables, race and socio-economic status, seemed to have somewhat less influence. Finally, the number of charges and perceived demeanor appeared initially to be of minor consequence.

The path analysis summarized in Figure II confirmed

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ings no we we we get get the ing formation of the secondary process. Praint in Table XXV such and intelly the problems officer's we shall exten or the officer's we probe then adjustment, ret minar presentencing process. Two lagal seriousness and pride second, also

variables, race and rocio-economic status, seemed to have somewhat loss influence. Fin:

many of these impressions. The core part of the path model illustrated the role of recommendation, success prospects, prior record, and offense seriousness. In contrast with the impression conveyed by the initial data, however, perceived demeanor was revealed to have a modest indirect influence on recommendation. This variable operated through the probation officer's evaluation of the offender's success prospects. Finally, the related influences of race and socio-economic status remained modest, but stubborn, in their apparent causal influence (i.e., legal variables could not be shown to mediate a large part of the original relationships). It is of interest to note, however, that some part of the small influence of race and socio-economic status on recommendation is mediated by the probation efficer's evaluation of the offender's prospects for success on probation.

There is some indication in these findings that a pessimistic "group image" of the Native and poor offender influences the probation officers' recommendations. Follow-up studies of probation suggest the foundation of this group image: Native and lower socio-economic status offenders recidivate far more frequently than their non-Native and higher socio-economic status counterparts (Bricker, 1973; Landis et al., 1969). In short, there is a discomforting actuarial basis for pessimism in the probation officers'

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estimations of the probationary risks posed by such offenders. Insofar as the probation officer is held accountable for recidivism associated with his recommendations, it should perhaps not come as a surprise that this consideration operates to some extent in his deliberations. Future research should, however, remain sensitive to the possibility that the probation officer's projection of success prospects may have a self-fulfilling effect. These findings also encourage the search for alternatives to imprisonment that would minimize the risks of probation, while reducing the social and economic costs of incarceration. We will return to these considerations in the following chapters of this thesis.

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FOOTNOTES

1 For a review of studies of the effectiveness of probation, see Hood and Sparks (1970:Chapter 6). For a brief discussion of the use of presentence reports in a Canadian province, see Hogarth (1971:237-243:246-265).

For example, Kalven and Zeisel's classic study of <u>The American Jury</u> used as data information collected from approximately one third of the respondents initially contacted (1960:36).

Guttman scales have two distinguishing characteristics. First, they are unidimensional: the component items all measure movement toward or away from the same single underlying object. Second, they are cumulative: the component items are ordered in "difficulty" such that respondents who react positively to a difficult item will with few exceptions react similarly to less difficult items (Nie, et al., 1970:197).

*For a discussion of these statistics, see Nie (1970:201). A general guideline to the interpretation of the coefficient of reproducibility is that a value of .9 or higher is necessary to indicate a valid scale; the coefficient of scalability should be higher than .6 if the scale is to be considered unidimensional and cumulative.

5The response options are indicated in Table XXIII. The function of a Likert-tyle scale is to guage the subject's intensity of response on a range between two extremes (e.g., very favorable-very unfavorable).

6Although in this jurisdiction it is not the practice to <u>formally</u> provide a recommendation for sentence, this recommendation may nonetheless be offered by <u>informal</u> means.

7The F-test is used as the test of significance. For a discussion of this test, see Blalock (1960:259-261).

*This figure is rounded to two places.

CHAPTER VI:

INCARCERATION AND TREATMENT: THE SOCIAL

CONSEQUENCES OF SENTENCING

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INCARCERATION AND TREATMENT: THE SOCIAL CONSEQUENCES OF SENTENCING

With good reason, incarceration is a penalty of last resort. Discussions of imprisonment seldom note the infrequency with which incarceration is imposed as a primary sentencing option. The sample of cases drawn from the Crown Prosecutor's Office in the City of Edmonton provides an appropriate example. Incarceration, without the option of fine payment or probation, was the sentence imposed in less than ten per cent of the cases considered. Similarly absent from many discussions is an indication of the major reason why the use of incarceration is restricted: the economic cost of imprisonment is prohibitive. At present standards, it costs up to thirty dollars a day to incarcerate a single offender (Bricker, 1973). These facts provide a context for the analysis of incarceration and treatment that follows.

THE SAMPLE

The sample of incarcerated offenders was collected by visiting the five largest correctional institutions operated by the Province of Alberta. Offenders serving time in these institutions do so in one of two ways: (1) they are sentenced directly to prison, or (2) they are incarcerated in default of fine payments. The analysis that follows is designed to investigate the relationship of race to

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imprisonment in both of these circumstances. Attention is also given to the treatment received following imprisonment.

The sample consists of the cases of all offenders sentenced and admitted to the five provincial institutions during a two month period, from February 15 to April 15, 1973. Information relating to each case was abstracted by the researcher and an assistant from one thousand inmate files, and recorded on the data collection instrument presented in Appendix III. As in previous chapters, the offender was the unit of analysis. In order to treat the offender as the unit of analysis, it was necessary to select the salient charge involved in each case. This was accomplished by choosing the offense assigned the most severe sentence (cf. Green, 1961).

ANALYSIS OF THE DATA

Analysis of the data takes place in four stages, involving four dependent variables: (1) length of imprisonment, (2) option of fine payment, (3) amount of fine, and (4) type of institutional confinement. Nine variables considered in the various stages of the analysis are presented in Table XXVII.

Information relating to each of the nine variables was recorded from the inmate files and coded as indicated in the

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TABLE XXVII: VARIABLES IN THE INCARCERATION AND TREATMENT ANALYSIS

Notation	Variable	Scale			
Χı	Race	White	(1)	Indian & Metis	(2)
χ²	Prior Convictions	None 1-5 6-10 11 or more			(1) (2) (3) (4)
Хз	legal Sericusness of Offense (mea- sured as maximum imprisonment allowable by statute)	6 Months* 18 Months 2 Years 3 Years 5 Years	(1) (2) (3) (4) (5)	7 Years 10 Years 14 Years Life or Death	(6) (7) (8) (9)
χ4	Legal Seriousness of Offense (mea- sured as maximum fine allowable by statute)	\$100 \$200 \$500 \$1000			(1) (2) (3) (4)
X 5	Number of Charges	1-10 charges			
Х 6	Length of Imprisonment	1-1000 days i	.n 50 da	y intervals	
χ,	Amount of Fine	1-1000 dollar intervals	s in 50	dollar	
Хв	Option of Fine Fayment	No Fine Option	on		(1) (2)
Х.	Type of Institutional Confinement	Open Institut			(1) (2)

^{*}Six months imprisonment is the maximum penalty allowable for conviction on a summary offense. The remaining maximum penalties listed in this scale involve convictions for indictable offenses,

Table. For example, the racial background (X1) of an offender was indicated as (1) white or (2) Indian or Metis on the basis of designation as such in the file. Similarly, the number of prior convictions (X2), number of current charges (X5), the length of imprisonment (X6), amount of fine (X7), and option of fine payment (X8) were directly from the inmate records. The type of institutional confinement (X^9) was indicated on the basis of the specific institution to which the offender was assigned. Thus, four of the institutions included in the sample are of the conventional "closed" variety, while the fifth (i.e., Belmont) is specifically oriented to the treatment of alcohol offenders in an "open" environment. Finally, offense seriousness was ranked independently on the basis of the maximum length of imprisonment (X3) and amount of fine (X4) allowable by statute for the offense involved.

In stages one and three of the analysis, involving the interval dependent variables length of imprisonment and amount of fine, the technique utilized is step-wise multiple regression. Racial background is treated as a "dummy variable" in both instances, while the remaining ordinal measures are treated as interval scales. This strategy follows from the discussion presented in Chapter Three.

In the second and fourth stages of the analysis,

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involving the dichotomized dependent variables option of fine payment and type of institutional confinement, tabular techniques are employed. The statistical measures applied are the chi square (X^2) test of significance and Goodman and Kruskal's gamma $(\Upsilon)^2$. A description of the analysis follows.

LENGTH OF IMPRISONMENT

The analysis begins by considering the length of sentences received by offenders incarcerated in the five provincial institutions. Correlation and path coefficients relating the variables involved are recorded on the right and left hand side of the diagonal that divides Table XXVIII. Thus, correlation coefficients (r;;) relating racial background (X1), number of prior convictions (X2), offense seriousness (X^3) , number of current charges (X^5) , and the length of imprisonment (X6) are presented to the right of the diagonal that divides this Table. This matrix of correlation coefficients forms the basis for the calculation standardized regression coefficients, or path coefficients $(P_{i,i})$, recorded to the left of the diagonal in Table XXVIII. Finally, path coefficients are selected from this matrix for the path diagram presented in Figure III on the basis of two criteria: (1) attainment of statistical significance at the .01 level3, and (2) explanation of more than one per cent of the variation in the endogenous g go i en edi

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and explains more than one per cent of the variation in the dependent variable.

TABLE XXVIII:

CORRELATION AND PATH COEFFICIENTS FOR LENGTH OF IMPRISONMENT ANALYSIS

Cumulative	5 2	;	60.	80.	. 01	. 50	t of the icated by t of the ed by row.
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Correlation Coefficients	9 ×	23	40.	.70		1	Correlation coefficients are listed to the diagonal, with the dependent variables column. Fath coefficients are listed to the diagonal, with the dependent variables is N=999.
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variable.

The path diagram presented in Figure III exposes popular myth about the sentencing of Native offenders. In spite of the disproportionate presence of Native persons in federal and provincial prisons, it has often incongruously argued that the courts treat Indian and Metis offenders with differential leniency (e.g., Canadian Corrections Association, 1967). A misleading basis for this belief exists in the zero-order relationship between racial background and length of sentence; thus, Table IIIVXX indicates a moderately strong, inverse relationship between the two variables (r61=-.23), with Native persons receiving the shorter sentences. However, the path coefficient linking race to sentence (P61=-.06) indicates that the relationship is mediated by other variables. Employing Land's (1969) formula for the calculation of total indirect effects (TIE=r - p), we can estimate that race has an indirect effect on sentence of -.17.

The path diagram presented in Figure III indicates that the relationship between race and sentence is mediated by the sericusness of the offense charged. Operating through offense seriousness, race has an indirect causal effect on sentence (P³¹P⁶³) of -.21.4 Expressed verbally, it is the differential seriousness of the crimes charged against white

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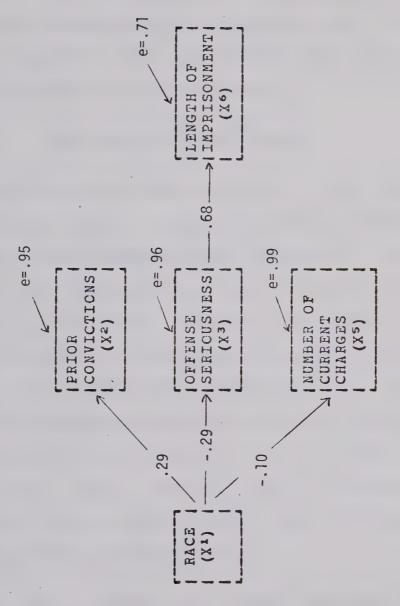
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FIGURE III:

A PATH MODEL OF SENTENCING: LENGTH OF INCARCERATION



and Native offenders that produces the "disparity" in the sentences received. In short, Native Persons are primarily charged with minor offenses, and they tend as a result to receive shorter sentences. This finding may help to dispel an apparent paradox that has confused discussions of the sentencing of Indian and Metis offenders.

THE OPTION OF FINE PAYMENT

Having failed to discover anything in the length of prison sentences given to Indian and Metis offenders that would explain their disproportionate presence in the prison population, our attention is directed next to the use of fine options in sentencing. Because the option of fine payment represents a dichotomized dependent variable, and because we anticipated the possibility of interaction between the independent variables involved, a decision was made to utilize tabular techniques in this phase of our concern was to determine analysis. Our first proportions of the two racial groups were serving prison sentences in default of fine payments.

Table XXIX reveals a rather striking finding: incarceration of Native Persons for forfeiture of fine payment is nearly <u>double</u> the rate for whites. Thus, Table XXIX indicates that nearly <u>two thirds</u> of the Indian and Metis offenders in the sample were serving sentences

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TABLE XXIX:

CROSS-CLASSIFICATION OF RACIAL STATUS

AND OFFICH OF FINE PAYMENT

Fine Option

Race	No Fine Option	Fine Option	Row
White	(394)	34.3% (206)	60.2%
Indian & Metis	35.6%	64.4% (255)	39.8%
Column Total	(535)	(461)	966
Chi Square P .001 Gamma = .55	= 85.50		

er E	Cylindrian (Cylindrian Cylindrian	(2) (2) (3)
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involving a default in the payment of fines. In contrast. slightly more than one third of the white offenders had failed to take advantage of a fine option. The alarming implication that a salient factor is in the racial composition of this sample is the tendency of Indian Metis offenders to serve time in prison in lieu of the payment of fines. 5 The relationship suggesting conclusion is significant at the .001 level, with gamma equal to .55.

There was an expectation in planning the analysis that the tendency to default in the payment of fines would be characteristic of a particular type of offender. Table XXX, involving a control for the type of offense and the number of prior convictions, reveals that this is indeed the case. Inspection of the Table indicates that the relationship between race and option of fine payment is strongest for summary offenders who have previously been convicted. In this instance, gamma reaches a value of .62, a finding that is statistically significant at the .001 level.

The pattern observed seems to be one of repeated involvement in summary offenses, resulting in sentencing options for fine or imprisonment, followed by racial differences in default and incarceration. Our next interest was in determining the link between this pattern and

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TABLE XXX:

CEOSS-CLASSIFICATION OF RACIAL STATUS BY OPTION OF FINE PAYMENT,

CONTROLLING FOR OFFENSE AND PRIOR RECORD

Offense and Prior Record

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le Offe	Fine Option	12.1% (30) 248	17.9% (17) 95	re = 1.
Indictal Prior Co	No Fine Option	87.9% (218)	82.1%	Chi Square = 1.49 P < .30 Gamma = .23
nse, tions	×	34	17	
le Offe Convic	Fine Option	21.4%	9.1%	re = .3
Indictable Offense, Indictable Offense, No Prior Convictions Prior Convictions	No Fine Option	78.6%	90.9%	Chi Sgua P < .30 Gamma =
n S	z	123		.74
Offense	Fine Option	58.5% 78.6% (72) 123 (66)	85.8% (188) 219	re = 30
Summary Offense, Prior Convictions	N No Fine N No Fine Fine N No Fine Fine N Option Option Option	41.5%	14.2%	Chi Square = 30.74 Chi Square = .32 P < .001 Camma = .62 Gamma =46
ions		92	42	
Offense, Convict	Fine Option	71.1%	83.3% 14.2% (35) 42 (31)	:e = 1.5
Summary Offense, Summary Offense, No Prior Convictions Prior Convictions	No Fine Fine Option Option	28.9%	in 16.7%	Chi Square = 1.59 P < .30 Gamma = .34
		White	Indian & Metis	

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involvement in problems of alcohol abuse.

Each offender incarcerated in a provincial institution is admission as either "temperate" or ranked on "intemperate" in his use of alcohol. While this ranking probably is biased in the direction of underestimation, it nonetheless provides a rough indication of the distribution alcohol abuse. When this measure of alcohol abuse is of cross-classified with race, the results indicate that 24.0 per cent of the white offenders (N=141) and 47.6 per cent of the Indian and Netis offenders (N=185) have drinking problems. In short, drinking problems are nearly twice common among Native offenders as they are among white offenders. Table XXXI takes this finding into account by cross-classifying racial status and option of fine payment, while controlling for alcohol use and prior Inspection of this Table reveals that the relationship between race and option of fine payment is strongest for "intemperate" drinkers who have previously been convicted (Gamma=.73:P<.001). In sum, Indian and Metis offenders, significantly more often than whites, seem to become entrapped in the "revolving door" of incarceration that punctuates the life of the alcohol offender.

THE AMOUNT OF FINE

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TABLE XXXI:

CROSS-CLASSIFICATION OF RACIAL STATUS AND OPTION OF PINE PAYMENT,

CONTROLLING FOR ALCOHOL USE AND PRIOR RECORD

Alcohol Use and Prior Record

Race	Temperate, No Prior Conv	e, Convict	ions	Temperate, Prior Conv.	nperate, Temperate, Prior Convictions	Intemperate, No Prior Conv	ate, Convicti	Lons	Intemperate, No Prior Convictions Prior Convictions	ate, nviction	w
	No Fine Option	Fine Option	×	N No Fine Fine Option Option	23	No Fine Fine Option Option	Fine Option	z	No Fine Fine N Option Option	Fine Option	×
White	53.4%	46.6% 148 67.0% (69)	148	67.0%	33.0% 297 51.6% (98)	51.6% (16)	48.4%	31	78.0% (85)	22.0% 109 (24)	60
Indian 6 Metis	34.2%	65.8% (25)	38	38 35.5% (59)	64.5% 166 26.3% (107) (5)	26.3%	73.7% 19 (14)		35.4%	64.6% 161 (104)	61
	Chi Square = P < .001 Gamma = .37	i Square = 3.71 < .001 .mma = .37	-	Chi Square = P < .001 Gamma = .57	Chi Square = 41.45 Chi Square = 2.14 P < .001 Gamma = .57 Gamma = .49	Chi Square P < .01 Gamma = .49	re = 2.14		Chi Square = 45.57 P < .001 Gamma = .73	re = 45.	57

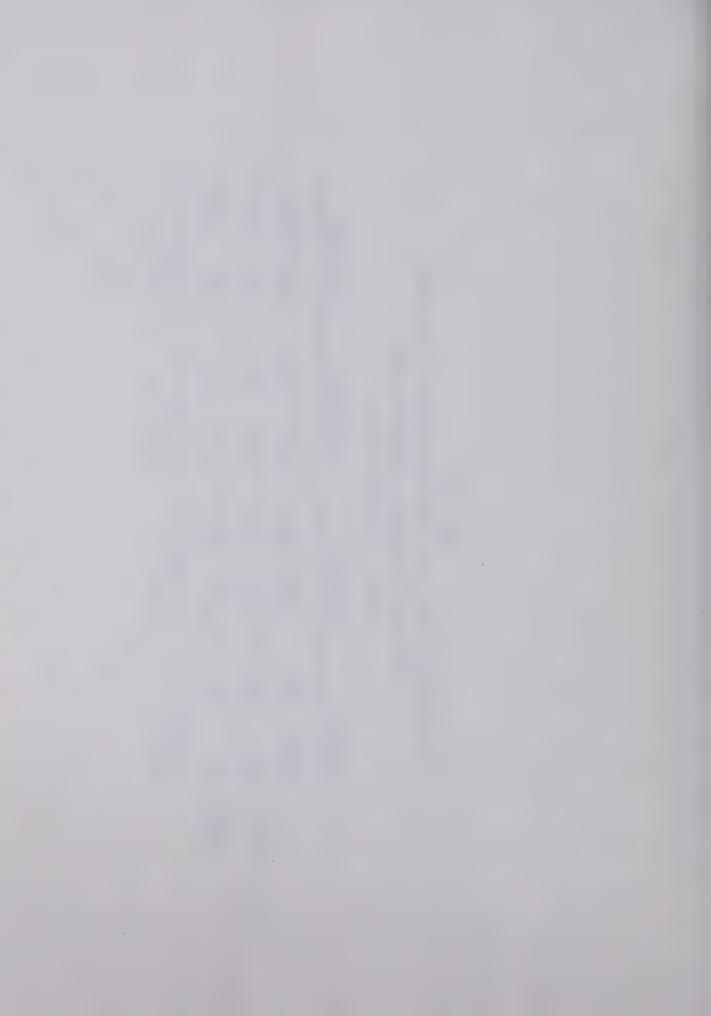


TABLE XXXII:

CORRELATION AND PATH COEFFICIENTS FOR FINE ANALYSIS

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* Statistically significant at the .01 level. **Statistically significant at the .01 level, and explains more than one per cent of the variation in the dependent variable. fines, questions naturally emerge regarding the <u>amount</u> of the fines charged offenders from the two groups involved. For example, "Do Native Persons receive higher, lower, or approximately the same fines as white offenders?"

Correlation and path coefficients relating racial background (X1), prior convictions (X2), offense seriousness (X4), number of changes (X5), and amount of fine (X7) are reported in Table XXXII. Path coefficients were selected from this Table for the path diagram presented in Figure IV on the basis of two criteria previously discussed: (1) attainment of statistical significance at the .01 level, and (2) explanation of more than one per cent of the variation in the endogenous variable.

As in the case of length of sentence, the zero-order relationship between racial background and amount of fine (r⁷¹=-.27) misleadingly suggests that Indian and Metis offenders receive favored judicial treatment. However, looking to the path diagram presented in Figure IV, we see that the relationship between race and amount of fine is mediated by offense seriousness. Similarly, while racial background is linked to number of prior convictions, the effect of the latter variable on amount of fine is mediated by offense seriousness. Thus, the causal indirect effect of racial background on the amount of fine (P²¹P⁴²P⁷⁴ + P⁴¹P⁷⁴)

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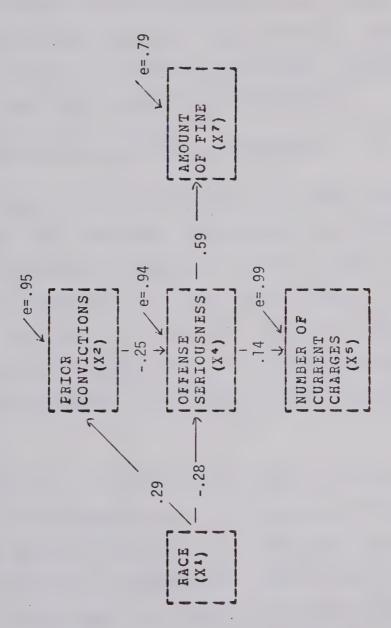
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FIGURE IV:

FATH MODEL OF SENTENCING: AMOUNT OF FINE



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is -.21. Expressed verbally, the effect of race and prior convictions on the amount of fine imposed is "interpreted" by the seriousness of the offense charged. In different terms, Native background does not significantly influence, in either a lenient or punitive direction, the amount of fine imposed, when legal variables are controlled.

TREATMENT FOLLOWING INCARCERATION

In the final part of our analysis, we were concerned with the type of treatment received by the incarcerated offender. The dependent variable in this phase of our discussion is assignment to an "open" versus "closed" institution. The open institutional setting involves a program primarily designed for the alcohol offender; the closed institutions offer a more rigid and conventional set of programs.

Assignment to a particular institution involves three factors: (1) the recommendation of the sentencing judge, (2) the expressed interest interest of the offender, and (3) the consent of correctional authorities. Immediately follwing sentencing, regardless of judicial recommendation, the offender is assigned to one of the four closed provincial institutions. Within several weeks following this initial assignment, contingent either on judicial recommendation or inmate request, a prison classification officer interviews

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the offender and evaluates the merits of referral to the open institution. The results of this referral process are the basis of the analysis that follows.

Our first concern was to determine the proportions of the two racial groups who received treatment in the open institution. The answer to this question failed markedly to distinguish the two groups: 8.9 per cent (N=53) of the white offenders and 4.8 per cent (N=19) of the Indian and Metis offenders were referred to the open institution during the period considered. However, the reader will recall from an earlier section that the "target population" of problem drinkers is nearly twice as large among Native offenders as it is among white offenders. A more meaningful approach to the question, then, requires that we adjust for the extent of the alcohol problem in the two groups involved.

Table XXXIII represents a control for the occurrence of alcohol abuse. The left hand section of this Table reassuringly indicates that "temperate" drinkers of either group seldom receive treatment in the open institution. A notable disparity, however, appears in the right hand section of the Table. Among "intemperate" drinkers, 22.0 per cent of the white offenders and 8.1 per cent of the Indian and Metis offenders are receiving treatment in the open institution. Controlling for the relative presence of a

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TABLE XXXIII:

IROPORTION OF NATIVE AND WHITE OFFENDERS RECEIVING TREATMENT IN OPEN AND CLOSED INSTITUTIONS, WITH ALCOHOL USE CONTROLLED

Alcohol Use

	Temperate		-	Intemperate	ate	
Race	Closed Institution	Open Institution	z	Closed Institution	Open Institution	Z
White	95.3% (423)	4.7% (21)	444	78.0%	22.0%	74
Indian & Metis	99.5% (202)	. 5%	203	91.9% (170)	8.1%	00
	statistical mreported for cause of the cases in the hand cell. Capercentage ditable is suffthe weakness	atistical measures are not ported for this table be- use of the small number of ses in the bottom right and cell. Calculation of a reentage difference for the ble is sufficient to indicate e weakness of the relationship.	of of the icate onship	Chi Square P .001 Gamma =	= 11.60	

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target population, then, there is some tendency for white offenders more frequently to receive the presumed benefits of life in the open institution.

There are three plausible explanations for the situation described. First, judges may less often recommend referral of Native offenders to the open institution. Second, Native offenders may less often seek and accept such referrals. Third, correctional personel may less often consent to the transfer of Native offenders. The three possibilities described are certainly not mutually exclusive, and in fact may be mutually supportive. Thus, it may be mutually agreed among the three parties involved that the open institutional setting is less beneficial for Native than for white offenders. This proposition suggests the possibility that alternative treatment opportunities for Native offenders may be desirable.

DISCUSSION AND CONCLUSION

Findings reported in the preceding sections have several implications. Focusing attention first on the role of race in the length of sentences received, data were presented indicating that although Indian and Metis offenders tend to receive shorter sentences, this pattern is largely explained by the group's disproportionate involvement in minor summary offenses. This aspect of our

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analysis, then, describes sentencing practices as conforming with legal requirements and as being free from extra-legal distortions. In particular, the popular belief that Native offenders receive differentially <u>lenient</u> treatment from the courts is not supported by this phase of our analysis.

A second part of the analysis concentrated on the use of fines in sentencing. It was here that the most striking finding appeared: nearly two thirds of the Indian and Metis offenders who entered prison over the two month period did so in default of the payment of fines. This figure was almost twice that of white offenders in the sample. Further analysis linked this pattern with the disproportionate, and repetitious, involvement of Native Persons in summary offenses and related problems of alcohol abuse.

The third part of our analysis involved the amount of the fines received by offenders of white and Indian background. Findings reported in this section paralled those of the first phase of the analysis. Thus, although Native persons tend to receive smaller fines, this is not a concession to disadvantaged circumstances or an expression of paternalistic leniency; rather it is a product of the offenders' involvement in minor offenses. In different terms, when legal variables are controlled, the fines imposed on Indian and Metis offenders approximate those

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The final phase of the analysis involved the treatments received by offenders following incarceration. The results of referrals to an open institution concentrating on the treatment of alcoholism were analyzed. When racial differences in rates of alcohol abuse were controlled, a disparity in the frequency of Native referrals was observed. In short, the presence of Indian and Metis offenders in the open institutional setting under-represented the occurrence of drinking problems among members of this group.

Findings reported in this Chapter suggest the possible utility of alternative strategies of response to the offense patterns of Native persons. Among the alternatives to current policy that have recently received attention are:

(1) the development of a progressive, income-related fine system, (2) the use of Native court workers to negotiate manageable fine arrangements, and (3) the establishment of Native-operated, community-based, detoxification and treatment centers. Attention to the potential benefits of these developments is continued in the final sections of the concluding chapter to this thesis.

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FOOTNOTES .

10ffenders remanded to provincial institutions while awaiting sentence were not included in this sample.

For a discussion of the chi square test of significance, see Blalock (1960:212-225). For a discussion of gamma, and its proportional-reduction-in-error (PRE) interpretation, see Costner (1965).

The F-test is used as the test of significance. For a discussion of this test, see Blalock (1960:266-269).

*For a discussion of the distinction between causal and non-causal indirect effects, see Finney (1972).

5It is plausible to suggest that forfiture of fine payment represents a rational response to the circumstances of environment and employment that characterize the winter months included in this sample.

GIntuitively, the reader may have initial difficulty in understanding the negative relationship between the number of prior convictions and offense seriousness. However, when the problem of alcohol involvement is considered, the pattern will more easily be understood. In short, alcohol offenders are repetitiously involved, in a "revolving door" fashion, in minor offenses.

7Inspection of the data revealed that such persons were usually drug offenders receiving treatment in the open institution.

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CHAPTER VII:

CRIMINAL JUSTICE RECONSIDERED: A REMEMBRANCE OF CAUSES PAST

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CRIMINAL JUSTICE RECONSIDERED: A REMEMBRANCE OF CAUSES PAST

The explanations of crime are numerous. There are periods, however, when a particular type of explanation will predominate. We live in such a period, and the early nineteen-sixties were similar in this regard. In retrospect, the oversights of a unidimensional thought-way seem clear. We can recall the misplaced optimism of a style of thought that encouraged a "War on Poverty"; we can recognize the presumption of our efforts to create "Great", or even "Just", societies. There were, hopefully, lessons in these experiences.

Marvin Wolfgang summarized the thoughts of leading criminologists during the early sixties: "Although there are important differences among... writers, their dominant themes are similar: There are values in [North] American society which emphasize the goals of (mostly material) success. Because the means to achieve these goals are not available to all in equal measure, many people fall prey to feelings of anxiety and dispair which may be expressed in forms of deviance and delinquency" (1966:65). Most of us foresaw a solution to our difficulties: "... as we expand... choices of work and residence, travel and leisure, school and profession, we will reduce the inequity and increase

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Marrin Molfgang purperized the incurred the incurred minimisologists during the early mitties: "Althery their important differences among, writers, the themes, are similar: There are values in [Terms] A.e. of the which emphasize the goals or (mostly material) as Because the nemax to scale or (mostly material) diable to all to equal measure, many prorie fall pray to of anxiety and dispate which may be expressed in most any may be expressed in most any may be expressed in most any dispate which may be expressed in most any dispate of the column delinguages. (1986:68) where of the column delinguages (1986:68) where the column delinguages (1986:68) where of the column delinguages (1986:68) where the column delinguages

participation. Although no firm prediction can be made, both changes should cause a decline in crime" (<u>Ibid</u>.: 67). We were hopeful: "We can now afford to be more optimistic because we are coming to recognize that some of the forces leading to crime and delinquency may be subject to control" (Ibid.: 69).

Few would dispute the conclusion that time has provided a discouraging test of our thoughts. Thus, most of us have been forced to revise our expectations. Some revisionists have gone so far as to revise our theories. The popularity of the new explanations have earned them several titles: the societal reactions approach, the philosophy of the underdog, and the labelling perspective. These new sociological explanations again share a dominant theme: the causes of crime lie not in the actor himself, but in the reactors responses to him. Emphasized in this point of view are the activities of the responding agencies of criminal control.

One objection to the new explanations of crime is that they are again partial. In emphasizing the societal response, they often ignore the antecedent experiences of the persons involved. One result is a new, and still misleading, optimism about the malleability of the circumstances associated with crime (cf. Nettler, 1974; Hagan, 1972; 1973a; 1973b). A second result is a new

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interest in criminal justice research. We will argue that some of this research is based in misconceptions about the process of criminal justice.

ON THE USE AND ABUSE OF DISCRETION

Modern discussions of criminal justice customarily begin by documenting the wide ranges of discretion given to various agencies of criminal control. For example, we are reminded of the vast discretionary powers given to judges for the determination of minimum and maximum sentences. It is observed, with some reason, that such discretion leads to variation in sentencing. This was, of course, one intention of revising the rigid penal statutes of the past. Modern jurists wished to fit the punishment not only to the act, but also to the actor. When "reasonable" men agree on the mitigating circumstances that legitimize variation in sentencing, the use of discretion is just that: the quality of being discreet. When "wise" men disagree, however, the issue of disparity emerges: we become concerned with inequality or incongruity in treatment. Modern criminologists often speak as if the relationship between discretion and disparity were obviously linear and certainly quite strong. Yet this author has not been able to locate any empirical evidence adduced to support this assumption. 1

Beyond this, the term "disparity" is used promiscuously

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discussions of sentencing. For example, we speak with in equal currency of disparities in rates of incarceration between nations, in the length of prison terms between states and provinces, and in the use of probation between judges. The reader will note that each of these applications the term has in common a reference to an aggregated unit of analysis. However, to confuse the picture further, the "disparity" is used also to describe variation in the sentences received by different types of offenders. Looseness in the use of the term encourages a carelessness in its interpretation. Thus it is a common error to identify disparities between units of analysis with the disparities may or may not occur within them. Clearly, that judges that in jurisdication "A" systematically impose longer sentences jurisdiction "B", says nothing about the judges in treatment of minority group offenders in either context. Stated in general terms, there is no logical connection variation between interorganizational and organizational bias. Yet, this distinction is consistently ignored in discussions that link the bureaucratization justice to race and class discrimination criminal in judicial decision-making. The importance of the distinction lies in the probability that variation between organizations is much more frequent than differential sentencing within them. 2

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In the end, what we really need to know is how extra-legal attributes like race and social class position contribute to variation in sentencing. We attempted answer to this question in Chapter Two, with a review of twenty American studies of extra-legal attributes criminal sentencing. The results of this review were instructive: instances where race, social class, age, or sex explained more than five per cent of the variation sentencing were rare. This was particularly the case in those studies where legal variables were held constant. several important exceptions to were generalization, specifically involving the use of capital punishment by juries. These exceptional findings underline the importance of maintaining a vigilant concern for equal treatment before the law. At the same time, however, the more general answer to the question "how much?" challenges a viewpoint that elevates factors like differential sentencing to a position of prominence among those variables thought to be productive of "criminality."

BARGAIN JUSTICE REAPPRAISED

A second issue that surrounds the process of criminal justice involves the transactions that are a part of criminal prosecution. Sociologists often adopt a rather puritanical attitude toward plea bargaining and charge

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negotiation. In these discussions, the bargained plea frequently assumes the characteristics of a traumatic loss of innocence for the unprotected defendant. Further, the act is often seen as degrading, not only for those who participate in the bargaining, but also for a system that respects due process and the ideal of adversary justice. There are, however, oversights associated with this set of attitudes.

The pressures that surround the process of criminal prosecution have the character of a "double bind." Guardians of civil liberties, for equally valid if not mutually accommodative reasons, insist on the swift and expeditious resolution of cases, while at the same time demanding the time-consuming properties of adversary proceedings. The bureaucratic demands former goal, augmented by efficiency, is customarily assumed to take official priority over any concern for due process. This corrupted form of the bureaucratic ethic has most frequently been cited in the (Blumberg, 1967a; Chambliss and United States Seidman, 1971) . Yet, in fairness, it should be noted that the United States accounts for approximately eithty per cent of the world's criminal jury trials (Kalven and Zeisel, 1966).

It cannot, however, be denied that bargain justice is an established and essential aspect of the social

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organization of modern criminal justice. What remains at issue is the question of who benefits. Certainly governments benefit in avoiding the further cost and crowding of courtrooms that full adversary procedures would require; but do the defendants not also benefit, and, most importantly, some benefit more than others? Some criminologists have argued that "bargain justice" is, in effect, a password for "class justice"; a means of exploiting the poor, while protecting the rich. In Chapter Four, we attempted an answer to this question by searching out the links between race and class position, and the procedures that lead to charge alteration and final disposition. Findings here indicated that race and socio-economic status were not significantly related to representation by counsel, the type of initial plea, or charge alteration. Further, the links that tied race and socio-economic status to prosecution and sentencing were of a legalistic variety: offense seriousness, number of charges, and prior convictions. Thus, although counsel, plea charge alteration were all important to final disposition, these factors were not race or class-connected. The possibility remains that bargain justice is socially unbiased.

GROUP IMAGES AND GROUP-LINKED BEHAVIORS

A third source of concern about the process of criminal

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justice involves the role of the probation officer, during the presentencing process, in determining the recommendation for sentence. We reported in Chapter Five, that among those cases where presentence reports were prepared, recommendation for sentence alone accounted for more the variation in the sentences imposed. A concern has been that unfavorable group images, disparagingly known as social stereotypes, may interfere with the manner in which these recommendations are offered.

Findings reported in Chapter Five provided limited support for this concern. For example, the racial background of the offender had a small direct and indirect effect the recommendation offered. The direct effect of race on recommendation seemed easily interpreted. However, the interpretation of the indirect effects was unclear. Both legal and extra-legal considerations intervened between race and recommendation. Thus, a legal factor operative in the situation was the tendency of Native offenders to have been convicted of previous offenses more often than whites. This, in turn, was related to the probation officer's reduced expectations for successful probation adjustment. In addition, the probation officer's perceptions of race- and class-linked demeanor intervened in the relationship between and recommendation. These factors operated alone, and concert, to produce a reduction in favorable in

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recommendations for Native offenders.

These findings clearly raise concern about influence of a pessimistic perception of the offender. At the same time, however, one should note the dilemma of the probation officer who is held accountable for the wisdom of his recommendations, as measured by the incidence of recidivism. The data available indicate that Native offenders recidivate on probation at a rate far higher than whites (Bricker, 1973). A hypothesis worthy of possibility further study is the that negative recommendations contribute to this outcome in selffulfilling manner. However, in lieu of any evidence that negative recommendations do in themselves have this effect, we are faced with the possibility that the pessimistic group image may accurately reflect an enduring set of group-linked behaviors. A resulting estimate of the persistence of such behaviors undermines the ease with which findings reported earlier can be interpreted as discrimination. Commenting on the type of interpretation problem involved, Wolfgang (1974) suggests that the descriptive phrase "differential sentencing" be applied. In either case, the findings reported do encourage the search for alternative responses to Native offense pattens that avoid the risks of probation, also avoiding the costs of imprisonment. One such development involves the expanded use of detoxification

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treatment centres. Consideration of such developments has the potential of broadening our approach to some of the problems of criminal justice.

THE HIGH COST OF CRIMINAL JUSTICE: AN ECONOMIC ANSWER TO AN UNPROFITABLE QUESTION

The tendency of the sociologist to trade on the emotions associated with the charge of discrimination has often seemed to preclude a more pragmatic appraisal of the problems of criminal justice in economic terms. The incarceration of offenders, just or unjust, Native or non-Native, is expensive. Thus, when incarceration can be avoided, it is a matter of fiscal importance that can be effectively discussed as such.

For example, in Chapter Six we encountered the alarming finding that nearly two thirds of the Native offenders sentenced and admitted to provincial institutions over a two month period were incarcerated in default of the payment of fines. This rate of Native incarceration following forfeiture in fine payment was nearly twice the figure found for white offenders. When the daily cost of imprisonment is calculated, this represents an enormous expense.

The obvious implication of this finding is the desirability of exploring alternative, more economical, ways

the potential of broadening out approach to some or the problems of criminal justices

THE RIGH COST OF CRIMINAL SUSTICE: AN ECGNOPIA

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dod were incarcerated in default of the payment of
This: rate of Native incarceration following

""" in fine payment was nearly twice the figure found
offendors. When the daily cost of imprisonment is

of responding to inability or reluctance to pay fines. Much of this problem involves the offense pattern of the Additional efforts in the development of detoxification and treatment centres have already been encouraged. Operation of such centres at the community level suggests the possibility of fitting programs particular group of offenders involved. The importance possibility is underlined by the additional finding in Chapter Six that, proportionally, fewer Native than offenders with drinking problems receive treatment in the open institutions provided for this purpose in the Province.

The development of a progressive, income-related combined with the additional use of Native court workers to negotiate workable arrangements for fine payment, further holds the hope of reducing the social and economic of an expensive problem. However, the experience of the sixties discussed at the outset of this Chapter should forewarn us not to expect either quick or complete solutions to the problems we have described. For example, it is highly doubtful that these alterations in our responses to such problems will lead to the disappearance, or even reduction, of the behavior patterns involved. Nonetheless, such an approach suggests the advantage of economy, combined with the hope of minimizing the unfortunate consequences that an alcoholic life style implies. These would not be

of this problem involves the effects of the alcoration of this problem involves the effects, in the development of determinational effects, in the development of determination and treatment centres have already mean encouraged. Operation of such centres at the convunty level suggests the possibility of fitting programs to the possibility is underlined by the additional findinapter-six that, proportionally, fewer Mative was offenders with directionally, fewer Mative was offenders with directed for this purpose that the contract of the co

The development, of a progressive, .m.

system, combined with the additional use of Watty,

workers to negotiate workable arrangesonts for r

further holds the hope of seducing the social and set

costs of an expensive problem. However, the expenses

the sixties discussed at the outset of this Chapte: an

forewayn us not to set either quick or complete solutions

to the problems we have described. For example, it is highly

if w that there alterations in our responses to such

lens will lead to the disapped range, or even the

small accomplishments. Our recommendations are thus offered with the hope that they will be considered, and ultimately implemented, with an appropriate moderation of expectation.

enall above the full terminate on ileast, and ultimately uith the continuous and ultimately with the supportation medication of appectation.

FOOTNOTES

'In contrast with this assumption, it can plausibly be hypothesized that when the range of discretion is greatest, informal norms take over the role of rigid legal requirements in making decision-making inflexible.

This distinction is also one way of calling attention to two groups of variables that deserve further attention in future sentencing research. The two groups of variables include consideration of the following: (1) the effects of such organizational constraints as case-load sizes, court referral rates, and fluctuations of space in treatment institutions, and (2) the role of such community factors as recidivism rates, variation in offense patterns, and the publicity given to certain types of crimes.

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inform 1 norms take over the rolls or right repair on the naking decision-making inflexible.

**This distinction is also one way of calling arreating arreating of two groups of variables that deserve that the state on the section of the followings (1) the attects of animational constraints as case-load size, and fluctuations of space and testions, and (2) the role of such community section divise rates, variable in objects on the section of y given to certain types of crimer.

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APPENDIX I:

DATA COLLECTION INSTRUMENT I:

PROSECUTION CASES

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THE REPORT OF THE PROPERTY.

ALBERTA CRIMINAL JUSTICE PROJECT DATA COLLECTION INSTRUMENT I: PROSECUTION CASES

<u>Note</u>: Information collected on this instrument is strictly confidential.

_	Canana	
⊥ •	Genera	
	1.	Defendant Is: In Custody: On Bail: N.A.:
	3.	Name of Judge or Justice Presiding: Name of Defense Counsel: None:
	J.	N.A
	4.	Defense Counsel Is: Legal-Aid: Client-Appointed:
		N.A.:
		Name of Prosecutor:
	6.	Defendant's Sex: Male: Female: N.A
	/•	Defendant's Age:
	0.	Charges Filed at Intial Court
	9.	Appearance: Final Charges:
	J.	IIIIII CIIII y Co .
	10.	Present, Victim Is: White:Non-White: N.A.:
	11.	Victim's Sex: Male: Female: N.A.
	12.	Victim's Relationship to Defendant: Spouse:
		Sibling:Parent:Child:Friend:Relative:
	45	Other: N.A.
		Victim Is: Child:Juvenile:Adult:N.A.: Previous Convictions:
		Plea to Current Charges: Guilty:or Not Guilty:
		If Known, Stage of Proceedings Where Guilty Plea
		Entered: Before Preliminary Hearing:After
		Preliminary Hearing: During Trial:N.A
	17,	Ethnicity of Defendant: Indian:Metis:
		French: Asian: Angel: Black: Other: N.A.:_
		Education Completed by Defendant: Grade: N.A.:
	19.	Defendant Is: Continuing His Education:Has Terminated:_N.A.:
	20.	Defendant Is: Employed:Not Employed:Student:
	2.0.	N.A.:
	21.	Type of Employment (When Employed):
		() Professional, Technical or Related Work
		(e.g., Doctor, Dentist, Teacher, Lawyer)
		() Business Manager, Official or Proprietor
		(e.g., Office Manager, Farm Owner)
		() Clerical or Related Worker (e.g., Clerk, Accountant)
		() Craftsman, Foreman, or Related Worker (e.g.,
		Carpenter, Electrician)
		() Operative or Related Worker (e.g., Truck
		Driver, Lumberman)

	23.	() Labourer (e.g., Farm or Non-Farm) () N.A. Defendant's Marital Status: Single:Married: Separated:Divorced:Common Law:N.A.: Number of Children:_N.A.: Defendant's Attitude: Very Uncooperative: Uncooperative:Fair/Indifferent:Cooperative: Very Cooperative:N.A.:
II.	Final	l Disposition of the Court (Specify):

1 Laboares (a p., Farm or Bon-Parm)

22. Defendant's Hactral Status: Sibple: Barriels

Suparated: Diverced: Concon Lew:

23. Number of Oblighen: N. 1.;

24. Defendant's Artimude: Very Borons-rativ

Uncooperation: En ryladifierer: Lue

Very Coeperative: p. h.:

II. Pinal Disposition of the Court (Speckty):

APPENDIX II:

DATA COLLECTION INSTRUMENT II:

PROBATION CASES

: INGREGATES

PRINTER COLLECTION ENSENSES

ALBERTA CRIMINAL JUSTICE PROJECT DATA COLLECTION INSTRUMENT II: PROBATION CASES

Note: Information collected on this instrument is strictly confidential.

		•
I.	Genera	al:
	1.	Docket Number of the Case: N.A.:
	2.	Docket Number of the Case: N.A.: Defendant is: In Custody: On Bail: N.A.:
	3.	Date of Request for Report:
5.		Name of Judge or Justice Presiding:
•	6.	Name of Defense Counsel: No Defense
	•	counsel:_N.A.:_
	7.	Defense Counsel is: Court-Appointed:Client
	•	Appointed:N.A.:
	8.	Name of Prosecutor:
	9.	Name of Probation Officer:
	•	
II.	Proba	ation Report:
		Name of Defendant:
	2.	Sex: Male: Female
	3.	City of Defendant's Address:
		If Known, Initial Charges Filed (Answer in terms of
		the section of the Criminal Code):
	5.	Present Charges (Sec. of Crim. Code):
	6.	If Present, Victim is: White:Non-White: N.A.:
		Victim's Relationship to Defendant: Spouse:
	•	Sibling: Parent: Relative: Friend:
		Other: N.A.:
	8.	Victim is a: Child:Juvenile:Adult: N.A.:
		Number of Previous Convictions:
	10-	Most Recent Previous Conviction: Less Than 6 Mo.
	,,,,	Ago: _6 Mo. to 1 Yr. Age: _ 1 to 2 Yr. Ago: _ More
		Than 2 Yr. Ago: _N.A
	11.	Disposition Resulting From Previous Conviction:
		Probation:Fine:Suspended Sentence:
		Prison: Combination: N.A.:
	12.	Plea to Current Charges: Guilty: or Not Guilty:
		_N.A.:
	13.	If Known, Stage of Proceedings Where Guilty Plea
	,,,,	Entered: Before Preliminary Hearing: _After
		Preliminary Hearing: During Trial:N.A.:
		rrorrandr nourande - narand rarare - name -
IIT	Pers	sonal History:
		Ethnicity of the Defendant: Indian:Metis:
		French Canadian: Japanese or Chinese
		Canadian:Angle Canadian:Other:
	2-	Education Completed by Defendant: Grade: N.A.:

- 3. Defendant is: Continuing His Education: __Has Terminated: N.A.:
- IV. Employment History:
 - 1. Defendant is: Employed: __Not Employed: __Student: __N.A.: __
 - 2. Type of Employment (When Employed):
 - () Professional, Technical or Related Work (e.g., Doctor, Dentist, Teacher, Lawyer)
 - () Business Manager, Official or Proprietor (e.g., office manager, farm owner)
 - () Clerical or Related Worker (e.g., clerk, accountant)
 - () Craftsman, Foreman, or Related Worker (e.g., carpenter, electrician)
 - () Operative or Related Worker (e.g., truck driver, lumberman)
 - () Labourer (e.g., farm or non-farm)
 - 3. Length of Current Employment: Less Than 6 Mo.: __6 Mo. to 1 Yr.:__1 Yr. to 18 Mo.:__18 Mo. to 2 Yr.:__ N.A.:
- V. Marital Status:
 - 1. Single: __Married: __Separated: __Divorced: __ Common
 Law: N.A.__
 - 2. Number of Children: __N.A.:__
- VI. Home Conditions (In Terms of Favorability for Probation Adjustment):
 - 1. The Living Situation of the Defendant is: Very Good: __Good: __Neutral: __Bad: __Very Bad: __
- VII. Habits:
 - 1. Use of Alcohol: Little or None: __Moderate: __ Problematic: N.A.:
 - 2. Is Alcohol Involved in the Present Offense:
 Yes:_No:_N.A.:__

 - 4. Are Drugs Involved in the Present Offense: Yes: No: N.A.:
- VIII. Future Plans:
 - 1. Evaluation of Future Plans in terms of Suitability
 for Probation: Very Good: __Good: __Neutral: __Bad: __
 Very Bad: __
- IX. Family:

<pre>(e.g., Doctor, Dentist, Teacher, Lawyer) () Business Manager, Official or Proprietor (e.g., office manager, farm owner) () Clerical or Related Worker (e.g., clerk, accountant) () Craftsman, Foreman, or Related Worker (e.g., electrician, carpenter) () Operative or Related Worker (e.g., truck driver, lumberman) () Labourer (e.g., farmer non-farm) () N.A.</pre>	g.,
X. Defendant's Attitude: Strongly Agree to Strongly Disa 1. Understands Charges: 1 2 3 4 5 2. Acknowledges Guilt: 1 2 3 4 5 3. Is Cooperative: 1 2 3 4 5 4. Indicates Remorse: 1 2 3 4 5 5. Is Polite: 1 2 3 4 5	agree
<pre>XI. Evaluation of the Case: 1. Defendant's Prospects for Successful Probation Adjustment: Very Good: Good: Neutral: Bad: Bad: 2. Recommendation: Probation:Fine:Suspended Sentence:Prison: Combination (Specify): No Definite Recommendation: Other (Specify):</pre>	
XII. Final Disposition of the Court (Specify):	



APPENDIX III:

DATA COLLECTION INSTRUMENT III:

PRISON CASES

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BATA COLLECTION INSTRUMENT III:

PELSON CASES

ALBERTA CRIMINAL JUSTICE PROJECT DATA COLLECTION INSTRUMENT III: PRISON CASES

Note: Information collected on this instrument is strictly confidential.

т	Genera	al•
 •		Docket Number(s) of the Case:
	2.	Place of the Trial:
	3.	Name of the Judge or Justice:
	4.	Name of Defendant:
	5.	Sex: Male: Female:
	6.	Age:
	7.	Present Charges (Section of Criminal Code):
	8.	If known, Victim is: White: Non-White: N.A.:
	9.	Victim's Relationship to Defendant: Spouse:
		Sibling: Parent: Relative: Friend: Other: _N.A.:
	10.	Victim is: Child: _Juvenile: _Adult: _ N.A.:_
		Number of Previous Convictions:
	12.	Most Recent Previous Conviction: Less Than 6 Mo.
		Ago: 6 Mo. to 1 Yr. Ago: 1 to 2 Yr. Age: More
	4.0	Than 2 Yr. Ago: _N.A.:
	13.	Disposition Resulting from Previous Conviction:
		Probation: Fine: Suspended Sentence: Prison:
	1/1	Combination:N.A.:_ Ethnicity of Defendant: Indian:Metis:
	170	French: Asian: Angle: Other:
	15.	Defendant is: Continuing his Education: Has
		Terminated: _N.A.:_
	16.	Defendant is: Employed:Not Employed:Student:
		N.A.:
	17.	Type of Employment (When Employed):
		() Professional, Technical or Related Work
		(e.g., Doctor, Dentist, Teacher, Lawyer)
		() Business Manager, Official, or Proprietor
		<pre>(e.g., Office Manager, farm owner) () Clerical or Related Worker (e.g., clerk,</pre>
		accountant)
		() Craftsman, Foreman, or Related Worker (e.g.,
		electrician, carpenter)
		() Operative or Related Worker (e.g., truck
		driver, lumberman)
		() Labourer (e.g., farm or non-farm)
		() N.A.
	18.	Length of Current Employment: Less than 6 Mo.:6
		Mo. to 1 Yr.:1 Yr. to 18 Mo.:More Than 18
		IN A

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Poho: Information collected on this instrume or tristly confidential.

	19.	Marital Status: Single:Married:Separated:
		Divorced:Common Law:N.A.:
	20.	Number of Children:N.A.:
	21.	Use of Alcohol: Little or None: _ Moderate: _
		Problematic: N.A.:
		Use of Drugs: Little or None:Moderate:
		Problematic:N.A.:
	23.	Education Completed:N.A.:
		A 00-00
II.	Final	Disposition of the Court:
		Specify for each charge:

19. Barried Sealure Sineire: Married: Separarei:
20. Bumber of Children: N.A.:
21. Use of Alcohol: Little or None: _moderate:_
22. Use of Bruds: Little or None: _moderate:_
22. Use of Bruds: Little or Hone: _moderate:_
22. Use of Bruds: Little or Hone: _moderate:_
23. Use of Bruds: Little or Hone: _moderate:_
24. Use of Bruds: Little or Hone: _moderate:_

Final Disposition of the Count:

APPENDIX IV:

CHARACTERISTICS OF THE CRIMINAL LAW IN CANADA

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To place our study in proper context, some distinctive features of the criminal law in Canada should be indicated. A significant factor is that Canadian criminal law is in federal jurisdiction, but provincial in its administration. Law enforcement and court personel fit this arrangement in different ways. For example, the RCMP is federal agency that operates contractually as enforcement agency for many of the provinces. Provincial judges and prosecutors are selected rather than elected, and appointed in the province of jurisdiction.

As distinct from the American pattern, Canadian provincial courts are unparalleled by federal courts serving similar functions. There is no Canadian bill of rights, constitutinal guarantees of "due process" are not provided, and jury trials are infrequent. However, cases tried in provincial courts can be appealed to federal courts. Sentences can be appealed not only by the defense, but also by the crown.

Finally, incarcerated offenders are a shared federal and provincial responsibility. Offenders sentenced to two or more years are assigned intially to provincial institutions for the period of their appeal rights, and are then transfered to federal institutions for the remainder of

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FOOTNOTES

¹For a more comprehensive discussion of the criminal law in Canada, see Dawson and Ward (1970).

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